REPORT OF THE COMMITTEE AGAINST TORTURE

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIFTH SESSION

SUPPLEMENT No. 44 (A/45/44)

UNITED NATIONS

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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[Original: English]

[21 June 1990]

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 4 May 1990, the closing date of the fourth session of the Committee against Torture, there were 52 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. A list of States that have signed, ratified or acceded to the Convention, together with an indication of those that have made declarations under articles 21 and 22 of the Convention, is contained in annex I to the present report.

2. The text of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2 and Add.1 and 2.

B. Opening and duration of the sessions

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The third and fourth sessions of the Committee were held at the United Nations Office at Geneva from 13 to 24 November 1989 and from 23 April to 4 May 1990.

4. At its third session, the Committee held 18 meetings (25th to 42nd meeting) and at its fourth session the Committee held 15 meetings (43rd to 57th meeting). An account of the deliberations of the Committee at its third and fourth sessions is contained in the relevant summary records (CAT/C/SR.25-57).

C. Membership and attendance

5. In accordance with article 17 of the Convention, the Second Meeting of the States parties to the Convention was convened by the Secretary-General at the United Nations Office at Geneva on 28 November 1989. The following five members of the Committee against Torture were re-elected for a term of four years, begining on 1 January 1990: Mr. Alexis Dipanda Mouelle, Mr. Yuri A. Khitrin, Mr. Dimitar N. Mikhailov, Mr. Bent Sørensen and Mr. Joseph Voyame. Accordingly, the membership of the Committee remains the same as during 1989. The list of the members, together with an indication of the duration of their term of office, appears in annex II to the present report.

6. All the members attended the third session of the Committee; however, Mr. Bengzon, Ms. Chanet, Mr. Gil Lavedra and Mr. Sørensen attended only a part of the session. The fourth session of the Committee was attended by all the members except Mr. Bengzon. Ms. Chanet and Ms. Díaz Palacios attended only a part of that session.

D. Solemn declaration by members of the Committee

7. At the 43rd meeting, on 23 April 1990, the five members of the Committee who had been re-elected at the Second Meeting of the States parties to the Convention made the solemn declaration upon assuming their duties, in accordance with rule 14 of the rules of procedure.

E. Election of officers

8. At its 43rd meeting, on 23 April 1990, the Committee elected the following officers for a term of two years in accordance with article 18, paragraph 1, of the Convention and rules 15 and 16 of the rules of procedure:

Chairman: Mr. Joseph VOYAME

Vice-Chairmen: Mr. Alexis DIPANDA MOUELLE
Mr. Ricardo GIL LAVEDRA
Mr. Dimitar N. MIKHAILOV

Rapporteur: Mr. Peter Thomas BURNS

F. Agendas

9. At its 25th meeting, on 13 November 1989, the Committee adopted the following items listed in the provisionsl agenda submitted by the Secretary-General in accordance with rule 6 of the rules of procedure (CAT/C/8) as the agenda of its third session. The agenda of the third session, as adopted, was as follows:

1. Adoption of the agenda.
2. Organizational matters.
3. Submission of reports by States parties under article 19 of the Convention.
4. Consideration of reports submitted by States parties under article 19 of the Convention.
5. Consideration of communications under article 22 of the Convention.

10. At its 43rd meeting, on 23 April 1990, the Committee revised the provisional agenda submitted by the Secretary-General (CAT/C/10) and adopted it as the agenda of its fourth session, as follows:

1. Opening of the session by the representative of the Secretary-General.
2. Solemn declaration by the newly elected members of the Committee.
3. Election of the officers of the Committee.
4. Adoption of the agenda.
5. Organizational and other matters.

6. Submission of reports by States parties under article 19 of the Convention.

7. Consideration of reports submitted by States parties under article 19 of the Convention.

8. Consideration of information received under article 20 of the Convention.

9. Action by the General Assembly at its forty-fourth session:

   (a) Annual report submitted by the Committee against Torture under article 24 of the Convention;

   (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights;

   (c) Consideration of consolidated guidelines for the initial part of the reports of States parties under international human rights instruments.

10. Adoption of the annual report of the Committee on its activities.

G. Working methods of the Committee

Third session

11. The Committee discussed its working methods at its 38th meeting, on 22 November 1989. With reference to article 19, paragraph 3, of the Convention and rule 68 of the rules of procedure, the Committee discussed, in particular, its method of formulating conclusions after considering each of the reports submitted by States parties. After a brief exchange of views, the Committee agreed to maintain its established practice of entrusting its Chairman and Rapporteur with the task of drawing up the general conclusions of the Committee at the end of the consideration of each report. It agreed that the general conclusions should concentrate especially on provisions of the Convention that a State party had wholly or partially failed to implement. Members of the Committee could submit any general comments they might have, in order to help the Chairman and the Rapporteur in their task.

Fourth session

12. The Committee resumed discussion on its working methods relating to its functions under article 19 of the Convention at its 48th and 49th meetings on 26 April 1990.

13. The Committee debated, in particular, possible ways of expediting and making more effective its consideration of reports submitted by States parties, as well as its conclusions, recommendations and general comments on each report considered.

14. The Committee agreed that, at each session, the Chairman, in consultation with the members of the Committee, would designate country rapporteurs and alternate rapporteurs for each of the reports submitted by States parties and scheduled for

consideration by the Committee at its following session. It was further agreed that the Secretariat would maintain a register of rapporteurs and alternates designated so that the task could be equally distributed among all members of the Committee, including the Chairman. As for reports that would be submitted by States parties after a session of the Committee, the rapporteurs and their alternates would be designated by the Chairman in consultation with the Secretariat.

15. The task of the country rapporteur, or his/her alternate, would be to study and evaluate the report, as well as any annexes to the report submitted by a State party, to prepare a comprehensive list of questions to be put to the representatives of the reporting State and to lead the discussion when the report is considered by the Committee. Questions would be prepared in an orderly manner to facilitate the dialogue with the reporting State. They would, in particular, focus on issues directly relevant to the implementation of the Convention following the order of articles of the Convention, refer to the issues listed in the Committee's general guidelines for the submission of reports by States parties and contain references to the relevant sections of the report under consideration.

16. The rapporteur would also be responsible for drawing up conclusions, recommendations and general comments based on the Committee's consideration of the report. Such conclusions, recommendations and general comments would be presented orally either at the end of the consideration of the report or during a subsequent meeting, without prejudice to any member of the Committee presenting his own conclusions. The representatives of the State party concerned would be invited to be present. Such conclusions, recommendations and general comments would be forwarded to the State party concerned in accordance with article 19, paragraph 3, of the Convention.

H. Co-operation and co-ordination of activities between the Committee and the Special Rapporteur of the Commission on Human Rights on questions relating to torture

Third session

17. The Chairman informed the Committee at its 37th meeting, on 21 November 1989, of the outcome of his informal meeting with the Special Rapporteur of the Commission on questions relating to torture. He pointed out that, as had been agreed by the Committee at its second session, the purpose of the meeting was to consider the possibilities of a division of tasks in order to avoid any duplication in discharging the respective mandates of the Special Rapporteur and the Committee and to secure co-operation in order to strengthen the measures to combat torture.

18. He recalled, in that connection, that in carrying out his mandate, the Special Rapporteur had three functions. The first was a systematic study of torture in the world and the submission of annual reports to the Commission on Human Rights on the question of torture, including the occurrence and extent of its practice, together with conclusions and recommendations. The second function was to make visits of a consultative character to countries, the visits taking place at the invitation of the respective Governments. The third function was to intervene urgently, mostly by means of a telegram to the Government concerned, when there was reliable information that cases of torture were actually occurring or were in danger of occurring.

19. The Chairman expressed the opinion that the first function of the Special Rapporteur was not a matter within the competence of the Committee since the Committee's mandate emanated from the Convention and was limited to its States parties. The Committee could not, therefore, deal with the overall world situation in respect to torture. The other two functions of the Special Rapporteur, namely, visiting States and urgently intervening vis-à-vis Governments, were based on hunanitarian grounds. These functions were not expressly mentioned in the Convention, but since the Committee took into account the principles and objectives of the Convention, it might perhaps assume those responsibilities in respect to States parties to the Convention. In this case, co-ordination of activities between the Committee and the Special Rapporteur would be necessary to ensure that States parties to the Convention would not receive an unduly large number of unco-ordinated visits and duplication of questions in the case of urgent appeals.

20. The members of the Committee discussed, in general, the allocation of functions between the Committee and the Special Rapporteur at the 42nd meeting, on 24 November 1989. They agreed that the study of torture and questions relating to torture in the world was a specific task of the Special Rapporteur and did not fall within the Committee's competence.

21. Regarding the possbility of visits by one or more members to the territory of a State party on humanitarian grounds and upon the invitation of the Government concerned, members of the Committee pointed out that they had first to acquire the appropriate training and technique of conducting such visits and that they should give careful consideration as to how humanitarian visits, which did not strictly come within the terms of the Convention, could be reconciled with confidential inquiries that they might undertake under article 20 of the Convention.

22. Regarding the possibility of urgent interventions by the Committee in cases of torture or threat of torture in a State party, the view was expressed that such interventions might be beyond the Committee's competence. Some members, however, were of the view that the Committee might designate one of its members to perform that function on a regular basis, especially when the Committee was not in session.

23. In conclusion, the Committee agreed to defer further consideration of those issues to a later session. The Committee also agreed that it was necessary to maintain close contacts, exchange of information and consultations with the Special Rapporteur before taking decisions on matters of mutual concern.

Fourth session

24. The Committee resumed discussion on these issues at its 48th meeting, on 26 April 1990.

25. Reference was made to General Assembly resolution 44/144 of 15 December 1989, in which the Assembly had welcomed the exchange of views that had taken place between the Committee and the Special Rapporteur of the Commission on Human Rights on questions relating to torture and had requested that this exchange be continued. Reference was also made to Commission on Human Rights resolution 1990/34 of 2 March 1990, in which the Commission had considered it desirable that the Special Rapporteur should continue to have periodic consultations with the Committee, in particular with a view to establishing the procedures for co-operation and avoiding any overlapping in the activities of the United Nations in combating torture.

26. The Chairman recalled that the following questions had remained open from previous discussions: whether and how visits to States parties to the Convention as well as urgent interventions in cases of torture in a State party could be co-ordinated between the Committee and the Special Rapporteur.

27. Members of the Committee considered that the mandate of the Committee under the Convention and the mandate given by the Commission on Human Rights to the Special Rapporteur were different but complementary. They also felt that it was still somewhat premature to take decisions concerning the allocations of functions between the Committee and the Special Rapporteur with regard to States parties to the Convention. They agreed that close contacts, exchange of information, reports and documents of mutual concern should continue between the Committee and the Special Rapporteur. These regular contacts and exchanges, with the assistance of the Secretariat, should make it possible to avoid any overlapping in their respective activities.

I. Co-operation between the Committee and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture

28. The Committee was informed at its fourth session of recent and planned activities of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, established by General Assembly resolution 36/151 of 16 December 1981. At its 49th meeting, on 26 April 1990, the Committee expressed the wish to continue to receive such information and to exchange views with the Board on matters of mutual concern in the future.

J. Co-operation with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Third session

29. At the 37th meeting, on 21 November 1989, Mr. Sørensen, at the Committee's invitation, provided information on the status and activities of the European Committee established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of which he was a member and had been First Vice-Chairman since September 1989. The Committee expressed the wish to establish a working relationship with the European Committee which dealt with the same questions, even though its functions and responsibilities, at the regional level, were different.

Fourth session

30. At the 49th meeting, on 26 April 1990, the Chairman informed the Committee that, at the invitation of the European Committee for the Prevention of Torture, he had participated in one of the meetings of its second regular session, which had been held at the United Nations Office at Geneva from 22 to 26 January 1990.

31. He also informed the Committee that he had participated, together with Mr. Sørensen, in a series of lectures on international action against torture and inhuman and degrading treatment which had been organized by the Chairman of the European Committee for the Prevention of Torture at the European University Institute at Florence from 2 to 4 April 1990.

32. He pointed out that the co-operation between the Committee against Torture and the European Committee for the Prevention of Torture with regard to visits to States which were parties to both the United Nations Convention and the European Convention appeared to be limited by the confidential character of their respective procedures concerning such visits.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FOURTH SESSION

33. This item was included in the agenda of the fourth session of the Committee, following the established practice of other human rights treaty bodies, with a view to enabling the Committee to consider the follow-up action given to its activities, and to other matters of interest, by the General Assembly and other United Nations organs on the basis of annual reports submitted under article 24 of the Convention.

34. The Committee considered this agenda item at its 48th and 49th meetings, held on 26 April 1990.

A. Annual report submitted by the Committee against Torture under article 24 of the Convention

35. The Committee had before it the summary records of the Third Committee of the General Assembly pertaining to the discussion of its annual report (A/C.3/44/SR.36-43, 50 and 52), as well as General Assembly resolution 44/144 on the status of the Convention.

36. The Committee took note with appreciation of the views expressed during the discussion in the Third Committee of the General Assembly, as well as of Assembly resolution 44/144, which supported the Committee in the development of its activities under the Convention.

B. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

37. In connection with this sub-item, the Committee had before it the following documents:

(a) Report of the Secretary-General on the effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (A/44/539);

(b) The study of an independent expert on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments (A/44/668);

(c) Report of the Secretary-General on the effective functioning of bodies established pursuant to United Nations human rights instruments submitted to the Commission on Human Rights at its forty-sixth session (E/CN.4/1990/39).

38. The Committee also had before it General Assembly resolution 44/135 of 15 December 1989 and Commission on Human Rights resolutions 1990/21 of 23 February 1990 and 1990/25 of 27 February 1990.

39. The Committee took note with interest of the comprehensive information brought to its attention with regard to general problems encountered by treaty bodies under international human rights instruments, proposed solutions and relevant long-term perspectives.

C. Consideration of draft consolidated guidelines for the initial part of the reports of States parties under international human rights instruments

40. At its third session, the Committee decided to consider at its fourth session the draft consolidated guidelines for the initial part of the reports of States parties under international human rights instruments (A/44/539, annex), on the basis of suggestions to be made by the Secretary-General, incorporating in the draft consolidated guidelines the relevant issues contained in part I of the Committee's general guidelines relating to the submission of initial reports by States parties (CAT/C/4/Rev.1). Accordingly, the Committee had before it at its fourth session the suggestions submitted by the Secretary-General (CAT/C/L.5).

41. At its 49th meeting, on 26 April 1990, the Committee approved the text of the draft consolidated guidelines for the initial part of the reports of States parties, submitted by the Secretary-General as appearing in document CAT/C/L.5, annex. The text as approved by the Committee is reproduced in annex IV to the present report.

III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

A. Action taken by the Committee to ensure the submission of reports

Third session

42. The Committee, at its 37th and 38th meetings, held on 21 and 22 November 1989, considered the status of submission of reports under article 19 of the Convention. In this connection, the Committee had before it the following documents:

(a) Note by the Secretary-General concerning initial reports of 27 States parties that were due in 1988 (CAT/C/5);

(b) Note by the Secretary-General concerning initial reports of 10 States parties that were due in 1989 (CAT/C/7).

43. The Committee was informed that in addition to the 12 initial reports that were scheduled for consideration by the Committee at its third session (see sect. IV, para. 53), the Secretary-General had received the initial report of Tunisia (CAT/C/7/Add.3).

44. In accordance with rule 65, of its rules of procedure, the Committee decided to request the Secretary-General to transmit to the States parties whose initial reports were due in 1988 but had not yet been received, second reminders concerning the submission of such reports. Accordingly, second reminders concerning the submission of initial reports were sent by the Secretary-General on 21 December 1989 to the following States parties: Afghanistan, Belize, Bulgaria, Luxembourg, Togo, Uganda, Ukrainian Soviet Socialist Republic and Uruguay. The Committee decided not to send second reminders to two States parties, namely Panama and Spain, which had informed the Secretariat that their initial reports were under preparation. The initial reports of Spain and the Ukrainian SSR were subsequently received by the Committee prior to its fourth session.

45. As regards initial reports due in 1989, or in subsequent years, the Committee decided to request the Secretary-General to send reminders automatically to those States parties whose initial reports were more than 12 months overdue.

Fourth session

46. The Committee also considered the status of submission of reports under article 19 of the Convention at its 54th meeting, held on 1 May 1990. In addition to the documents listed in paragraph 42 above, the Committee had before it a note by the Secretary-General concerning initial reports of 11 States parties due in 1990 (CAT/C/9).

47. The Committee was informed that in addition to the seven initial reports that were scheduled for consideration by the Committee at its fourth session (see sect. IV, para. 55), the Secretary-General had received the initial report of Turkey (CAT/C/7/Add.6).

48. The Committee was also informed that initial reports that were due in 1988 had not yet been received from the following States parties: Afghanistan, Belize, Bulgaria, Luxembourg, Panama, Togo, Uganda and Uruguay.

49. The Committee decided to request the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue, and subsequent reminders every six months.

50. The Committee also requested the Secretary-General to send reminders to Austria, Denmark, Egypt and Norway, whose additional information, requested by the Committee at its second session at the end of the consideration of their initial reports, had not yet been received.

51. The status of submission of reports by States parties under article 19 of the Convention as at 4 May 1990, the closing date of the fourth session of the Committee, appears in annex III to the present report.

B. Revision of general guidelines for the submission of initial reports by States parties

52. The Committee, at its 38th meeting, held on 22 November 1989, revised the general guidelines for the submission of initial reports by States parties (CAT/C/4) that had been provisionally adopted by the Committee at its first session, on the basis of a draft revision submitted by the Secretary-General at the Committee's request (CAT/C/L.4). The general guidelines, as revised, were adopted by the Committee at the same meeting and issued as CAT/C/4/Rev.1.

IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

53. At its third and fourth sessions, the Committee examined the initial reports submitted by 16 States parties under article 19, paragraph 1, of the Convention. It devoted 14 of the 18 meetings it held during the third session to the consideration of these reports (CAT/C/SR.26-37, 40 and 41). The following initial reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its third session:

France	(CAT/C/5/Add.2)
Senegal	(CAT/C/5/Add.8)
Hungary	(CAT/C/5/Add.9)
Union of Soviet Socialist Republics	(CAT/C/5/Add.11)
Argentina	(CAT/C/5/Add.12/Rev.1)
German Democratic Republic	(CAT/C/5/Add.13)
Byelorussian Soviet Socialist Republic	(CAT/C/5/Add.14)
Canada	(CAT/C/5/Add.15)
Cameroon	(CAT/C/5/Add.16)
Switzerland	(CAT/C/5/Add.17)
Colombia	(CAT/C/7/Add.1)
Chile	(CAT/C/7/Add.2)

54. At its 25th meeting, on 13 November 1989, the Committee agreed, at the request of the Government concerned, to postpone to its fourth session the consideration of the initial report of Senegal, which had submitted a new text of the report, replacing the text contained in CAT/C/5/Add.8.

55. At its fourth session, the Committee devoted 8 of its 15 meetings to the consideration of initial reports submitted by States parties (CAT/C/SR.44-47 and 50-53. The following initial reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its fourth session:

Tunisia	(CAT/C/7/Add.3)
Senegal	(CAT/C/5/Add.19)
Czechoslovakia	(CAT/C/7/Add.4)
China	(CAT/C/7/Add.5)
Ukrainian Soviet Socialist Republic	(CAT/C/5/Add.20)
Netherlands	(CAT/C/9/Add.1)
Spain	(CAT/C/5/Add.21)

56. At its 43rd meeting, on 23 April 1990, the Committee agreed, at the request of the Governments concerned, to postpone to its fifth session the consideration of the initial reports of the Czech and Slovak Federal Republic and Spain.

57. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee at which their reports were examined. All the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

58. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2 and Add.1 and 2);

(b) General guidelines regarding the form and content of initial reports to be submitted by States parties under article 19 of the Convention, which had been provisionally adopted by the Committee at its first session and transmitted to the States parties (CAT/C/4), as well as the final text of the general guidelines adopted by the Committee at its third session (CAT/C/4/Rev.1).

59. The following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain summaries based on the records of the meetings at which the reports were considered. More detailed information is contained in the reports submitted by the States parties and in the summary records of the relevant meetings of the Committee.

France

60. The Committee considered the initial report of France (CAT/C/5/Add.2) at its 26th and 27th meetings, held on 14 November 1989 (CAT/C/SR.26-27).

61. The report was introduced by the representatives of the State party, who referred to the implementation in France of the Convention on the basis of the three essential elements contained in that instrument: prevention of torture, punishment of torture and compensation for torture.

62. He explained that action by France aimed at preventing torture was organized at two levels: international and domestic. At the international, and especially European, level, France had on 9 January 1989 ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and a French national had been elected member of the Committee established under that Convention. In the domestic sphere, the judicial authority exercised effective control in police premises where persons were held in custody. In addition, inspections were carried out in France in all places where a person might be detained or imprisoned and where there were risks of violation of the Convention. The supervisory measures consisted of unannounced visits by judicial or administrative authorities, pursuant to various articles of the Code of Penal Procedure.

63. The representative also referred to the question of solitary confinement, which affected certain especially dangerous prisoners and which had given rise to controversy in the country during the summer of 1988. He described the conditions and guarantees under which solitary confinement was practised in French prisons and stated that, in that context, it could not be claimed that solitary confinement constituted cruel, inhuman or degrading treatment. Moreover, in mid-1988, the Minister of Justice had set up a commission to make proposals to strengthen further the protection of human rights in the implementation of criminal justice. On the basis of the initial conclusions of the commission, an Act had been promulgated on 6 July 1989 strengthening guarantees for persons detained pending trial. The commission would shortly be making its final proposals for improving the conduct of pre-trial proceedings as governed by the Code of Penal Procedure.

64. In connection with the prevention of torture, the representative referred also to a bill relating to the rights and protection of persons hospitalized for mental

disturbance, and to their conditions of hospitalization, which would shortly be debated in Parliament. He further stated that an Act of 2 August 1989 amending the Ordinance of 2 November 1945, relating to conditions of entry and residence of aliens in France, provided for additional legal guarantees and, in the case of aliens detained in France, for social and humanitarian assistance.

65. With regard to France's action for the punishment of torture and cruel, inhuman or degrading treatment, the representative pointed out that the offences of torture or acts of barbarism were embodied in the new draft penal code which Parliament had begun to consider in the spring of 1989. Given the magnitude of the task, its consideration would have to be spread over several parliamentary sessions. The draft penal code established sanctions for acts of torture or barbarism consisting of 15 years' imprisonment, which was increased under certain circumstances and could extend to life imprisonment.

66. The representative further stated that no cases of torture and very few cases of cruel, inhuman or degrading treatment or punishment had come before the French courts in recent years. In that connection, he referred to some cases of conviction or disciplinary sanctions imposed on police officers in 1988 and 1989 for unlawful acts of violence, as well as to two cases, dating from 1987 and 1988, respectively, of prison officers who had been convicted of acts of violence against prisoners. He added that France, since 1982, had been trying to secure the prosecution of Colonel Astiz, an Argentine national, who was suspected of involvement in the disappearance and torture of two French nuns in Argentina during the military dictatorship. The case against him was currently being heard by the Paris Court of Assizes.

67. With regard to compensation for torture and assistance to its victims, the representative made reference to the contributions of France to the United Nations Voluntary Fund for Victims of Torture as well as to the financing of two national bodies whose activities were related to torture: the Medical Committee for Exiles and the Association for the Victims of Repression in Exile.

68. The members of the Committee commended the Government of France on its comprehensive report and its representative on his oral presentation. Some members of the Committee welcomed, in particular, the fact that many specific cases of prosecution and conviction for ill-treatment had been cited by the representative of the reporting State and asked whether an analysis and statistics of the general trends in such cases existed in France. They asked also whether France intended to make any changes in its legislation as a result of its accession to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, what the reasons had been for promulgating the amnesty acts in France and what types of offences were affected by those acts.

69. More information was requested on the implementation by France of article 2 of the Convention and, in that connection, clarification was requested of the meaning of article 327 of the French Penal Code. It was also inquired how the regulations described in the report applied in non-metropolitan France, for instance in French Polynesia, which had been under a state of emergency.

70. With reference to article 3 of the Convention, it was asked whether, when the Minister of the Interior confirmed an expulsion order, an alien could be expelled immediately or whether the expulsion had to await the order of the administrative judge.

71. With regard to article 4 of the Convention, members of the Committee wished to receive the complete text of articles 320 and 344 of the French Penal Code relating to penalties for torture and for physical torture of persons arrested, detained or kidnapped. It was also asked whether torture inflicted by bodily injury which did not result in incapacity for work and had not been inflicted with premeditation or the use or threat of use of a weapon were still punishable under the Penal Code. In addition, clarification was requested on the sentence of the report dealing with the use of violence "in moderation".

72. With regard to article 7 of the Convention, the question was raised whether a torturer who had committed an extraditable political offence, but risked being tortured in the country to which he would be extradited, could be sentenced in France.

73. In connection with articles 10 and 11 of the Convention, information was requested on the observation in France of the United Nations Standard Minimum Rules for the Treatment of Prisoners and on the conditions and duration of solitary confinement. It was also asked whether the anti-terrorist and counter-intelligence services were subject to the same control and rules of conduct as the civilian police, and what was the régime applicable in combating drug traffickers.

74. In connection with article 12 of the Convention, information was sought as to whether there had been any mutinies in French prisons which might have been the result of mistakes on the part of the prison authorities and, if such were the case, what means had been employed to put an end to the difficulties caused by uprisings of that sort. It was asked, in particular, whether the use of truncheons or other physical means was authorized, whether special measures had been applied after certain uprisings, how many cases of mutiny had occurred, whether that type of incident had caused any casualties, and whether there had already been cases of mutinous prisoners being killed by the security forces. Reference was made to article 40 (2) of the Frnech Code of Penal Procedure, and it was asked whether there would be any exemption from the obligation of advising the Public Prosecutor of a crime without delay for a public official or civil servant who was married or related to the offender.

75. Referring to article 14 of the Convention, members of the Committee wished to know whether torture victims who came to France for treatment were allowed to stay after the treatment had been completed and what rehabilitation and social assistance facilities existed to help them. It was asked, in particular, whether, in view of the fact that acts of torture were prohibited by French law, the State could be held liable for acts of that type committed by one of its agents even in the case of a victim who was a national of a country with which France had not concluded a reciprocity treaty on matters of redress. It was also asked whether the direct liability of the State was established in France under article 706-3 of the Code of Penal Procedure or whether it was based on other provisions, whether article 1382 of the French Civil Code obliged an individual who had committed an act of torture to make personal redress by way of damages or whether the State had a responsibility to provide compensation under article 14 of the Convention. In addition, clarification was requested on the circumstances under which compensation might be refused or its amount reduced and regarding the persons who were eligible for compensation.

76. With regard to article 15 of the Convention, it was asked whether French courts had ever rejected evidence obtained through torture and, in that connection,

explanations were requested on the application of articles 427 and 428 of the French Code of Penal Procedure.

77. In reply to questions raised by the members of the Committee, the representative of France stated that the total number of cases of ill-treatment in his country involving police officers had been 10 in 1988 and 1989; that was considered a low figure in comparison with the total number of police officers in France who were required to participate daily in the prosecution and punishment of offences. He explained that France had not had to modify its domestic legislation as a result of its ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment since, unlike the United Nations Convention, the European Convention was basically preventive in character and did not contain any penal provision relating to indictment or punishment. He explained also that general amnesty acts were customarily adopted on the occasion of the election of the President of the Republic every seven years. They amnestied all offences which were not of excessive gravity; however, the victims of offenders who had been amnestied retained their right to redress.

78. With reference to article 2 of the Convention, the representative stated that the State of Emergency Act of 3 April 1955 applied to the entire territory of the French Republic, including overseas departments and territories, but with some differences.

79. Referring to article 3 of the Convention, the representative highlighted the additional guarantees provided by an Act of 2 August 1989 to aliens in respect of whom a removal order had been issued. An alien who had been the subject of an expulsion order could appeal to an administrative tribunal and simultaneously apply for a stay of execution. In any case, an alien would not be expelled to his own country if he could show that he was likely to be maltreated.

80. Turning to article 4 of the Convention, the representative referred to provisions of the French Penal Code, as well as to French case law concerning bodily injury, which indicated the kind of penalties applied in cases of bodily injuries resulting in an incapacity for work for less than eight days, acts of violence which had no immediate physical consequences but had psychological effects, and minor acts of violence. With regard to the use of violence "in moderation", he referred to the provisions of the Penal Code requiring police officers to use force only under certain circumstances, when it was strictly necessary and without excess.

81. In connection with article 7 of the Convention, the representative referred to the information already provided about proceedings which might be initiated against the perpetrator of an offence if extradition was not granted, and stated that no person would be extradited by France if such a person was liable to the death penalty or liable to be treated in an inhuman or degrading manner in the State requesting extradition.

82. Referring to articles 10 and 11 of the Convention, the representative described both the length of sentences incurred by persons found guilty of serious offences and the régimes applicable in French prison establishments. He pointed out that, since the adoption of the Act of 9 October 1981 abolishing the death penalty, the maximum sentence was rigorous imprisonment for life. The conditional release of a person sentenced to rigorous imprisonment for life could be considered after he had served at least 15 years, but it could not take place before 30 years

in certain cases of homicide accompanied by acts of torture or barbarism. Participation in the resettlement of prisoners formed part of the responsibilities of the government prison service as defined in the Act of 22 June 1987. With regard to the rules of conduct of counter-espionage services, the representative explained that the Directorate for Internal Security was subordinate to the Ministry of the Interior and its staff had the same status and were subject to the same control as police officers; the Directorate-General for External Security was subordinate to the Ministry of Defence, which was responsible for ensuring that the former functioned correctly, in compliance with the law. All members of counter-espionage services were subject to the requirements of the Convention, which was incorporated in French law. He added that France had very severe legislation against drug traffickers, permitting the extension of the duration of detention without charge to up to four days, whereas in ordinary law it was 48 hours. The legislation prescribed very severe penalties for drug trafficking: offenders were liable to imprisonment for up to 20 years, and up to 40 years for second offences. That legislation fell within the framework of the constitutional principles and international rules regarding the rights of the defence and human rights.

83. In connection with article 12 of the Convention, the representative pointed out that officers responsible for discipline inside prison establishments were not armed. If fairly serious incidents occurred, the governor could authorize the use of truncheons or tear-gas. In the case of generalized mutiny, the governor could call on the armed security forces. In the course of the preceding five years, three mutinies had taken place in local prisons, but without loss of life or serious injury. With regard to article 40 of the Code of Penal Procedure, it applied to officials in the performance of their duties, with no exemption.

84. With reference to article 14 of the Convention, the representative stated that victims of torture who came to France were assisted and helped by associations. Their situation on leaving hospital was the same as that of all other aliens. He also stated that, in France, direct liability of the State existed as distinct from the liability of the perpetrator. The victim of an act of violence by a police officer could initiate criminal proceedings against him or he could bring a liability suit against the State before an administrative tribunal. The victim would always receive compensation for material damage, even if the perpetrator of the act of violence had no means to pay. In addition, France was considering how to amend the law in order to extend the rights of victims to compensation.

85. In connection with article 15 of the Convention, the representative referred to the rules of evidence laid down in the French Code of Penal Procedure and to the relevant information provided in the report.

86. In concluding the consideration of the report, the members of the Committee congratulated the French Government on the measures it had taken to prevent and combat torture, which could serve as a model to other countries, and on the precise information it had submitted with regard to the implementation of the Convention. They also thanked the representatives of France for their detailed, clear and comprehensive answers to their questions.

Switzerland

87. The Committee considered the initial report of Switzerland (CAT/C/5/Add.17) at its 28th and 29th meetings, held on 15 November 1989 (CAT/C/SR.28-29).

88. The report was introduced by the representative of the State party, who pointed out that the Convention was at present the only United Nations instrument in the field of human rights to which his country was a party, but that his Government was about to submit for approval by Parliament the accession by Switzerland to the the international covenants on human rights and to the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, Switzerland was bound by regional instruments for the protection of human rights, in particular the European Convention on Human Rights and several of its additional protocols, as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had entered into force for Switzerland on 1 February 1989.

89. The representative stated that the fight against torture was one of the priority objectives of Swiss human rights policy in the international sphere. With regard to measures taken at the national level to give effect to Switzerland's commitments under the Convention, he referred to the jurisprudence of the Federal Court (the Swiss Supreme Court), according to which the prohibition of torture constituted an imperative norm of the law of nations which must be respected by all authorities and admitted of no derogation. Furthermore, international treaties accepted by Switzerland formed an integral part of the Swiss legal system and constituted an obligation of international law upon the Swiss authorities. There was accordingly no need to adapt domestic legislation to treaty obligations, as these were directly applicable. Even though the Swiss legislature had not deemed it necessary to designate torture as a specific offence as defined in article 1 of the Convention, the prohibition of torture operated in Switzerland on the basis of articles of the Penal Code relating to homicide, bodily injuries, endangering the life or health of another person, offences against liberty such as threats and coercion, attacks on sexual freedom and honour, and abuse of authority.

90. The representative also referred to the last part of article 1 of the Convention, according to which the term "torture" did not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. He pointed out that his Government considered as "lawful sanctions" only those generally admitted under both national and international law, such as the provisions of penal procedure which, when required by the needs of the investigation, limited the right of the prisoner to communicate with a third party. It did not attribute the term "lawful" to a sanction providing for the amputation of a limb, which it considered equivalent to cruel and inhuman punishment.

91. With regard to the acts of cruel, inhuman or degrading treatment or punishment referred to in article 16 of the Convention, he stressed that Swiss law, which expressly prohibited them, did not define them. He recalled, in that connection, that the European Commission and the Court of Human Rights, in jurisprudence binding on Switzerland, had established a distinction between torture and inhuman or degrading treatment on the basis of the threshold of intensity of the suffering inflicted; a hierarchy had thus been created on the basis of the degree of suffering to which the acts corresponded.

92. The members of the Committee thanked the Government of Switzerland for its comprehensive and detailed report and its representative for the clarity of his oral presentation. Some members requested information of a general nature on the relationship between the application of the United Nations Convention against Torture and the European Convention for the Prevention of Torture, on the abolition of the death penalty in the country and on the number of decisions handed down each

year by the Swiss Federal Court concerning human rights violations. With reference to the possibility for an individual to invoke the provisions of an international treaty before the national authorities, it was asked whether the term "individual" included individuals who were not Swiss citizens.

93. With reference to article 2 of the Convention, it was noted that, under Swiss military criminal law, when the execution of an order constituted a crime or lesser offence, both the person who gave the order and the subordinate who carried it out were punishable. It was asked, in that connection, whether a subordinate liable to punishment under that provision would be regarded as the perpetrator of the act or as an accessory.

94. With regard to article 3 of the Convention, members of the Committee asked for statistics on the number of cases in which extradition to a country practising torture had been refused by Switzerland before and since ratification of the Convention. They also asked whether, if at any time during adjudication on an application for asylum in Switzerland, information was received to the effect that the applicant might be subject to torture or even death if refused asylum, the Swiss authorities would respond to that information, and whether a person whose appeal concerning asylum by way of an administrative petition to the Federal Department of Justice and Police had been rejected was automatically expelled. It was noted that Switzerland had ratified the European Convention on Extradition in 1966, but that not until 1983 had it embodied in the relevant legislation the principle that guarantees must be given by the requesting State regarding the physical integrity of the person sought. It was asked, in that connection, whether in the intervening period there had been any cases of persons extradited contrary to the European Convention on Extradition. In addition, with reference to decisions of the Swiss authorities to send back asylum-seekers who were not recognized as refugees, it was asked whether there had been any cases in which exceptions had been made on the grounds that they were justified by the principle of non-refoulement or by particularly distressing human considerations.

95. Turning to article 4 of the Convention, members of the Committee noted that Switzerland had a monistic system, with immediate application of international norms and domestic law, and that it had not deemed it necessary to adopt a definition of torture. However, Switzerland recognized the rule of law in regard to offences and punishment. Hence, if the Convention provided for the legal dimension of the offence, there must be a corresponding legal dimension of the punishment. It was asked in that connection how the provisions of the Swiss Penal Code quoted in the report, which concerned offences such as bodily injury or threats and coercion were linked to the definition of torture contained in the Convention, how torture became a criminal offence in Swiss domestic law, and whether a judge could base himself directly on the definition of torture provided by the Convention. Members of the Committee also asked whether there were any differences between the Military Criminal Code and the Civil Criminal Code with respect to the penalties applied to acts of torture, whether the decision as to which code was applicable depended on the status of the perpetrator or of the act of violence concerned and what penalties were provided for in the Military Criminal Code and in the Civil Criminal Code for acts of torture. Specific examples of differences between federal and cantonal law on matters relating to torture were also requested.

96. In connection with article 6 of the Convention, it was asked what was the maximum period during which a person alleged to have committed an offence could be

remanded in custody and whether penalties were prescribed for abuse of authority in that respect.

97. With reference to article 7 of the Convention, it was asked whether it had been necessary, in order to apply the Convention in the Swiss Confederation, to enact a domestic law of procedure.

98. With regard to article 10 of the Convention, members of the Committee wished to know whether Switzerland had a separate security police and, if so, whether it had powers additional to those of the civil police, what efforts were made to educate and inform the public at large about the prohibition of torture and whether there had been any cases of sanctions being imposed on prison staff for acts of violence.

99. Referring to article 11 of the Convention, members of the Committee wished to know how solitary confinement was applied in the Swiss prison system and what were the differences between cantons in the length of solitary confinement to which prisoners could be subjected. Clarification was requested on Switzerland's current policies concerning holding a person incommunicado, and, in that connection, it was asked whether that practice was applied in the same way to Swiss nationals and to aliens who constituted a danger to the security of the State.

100. In connection with article 13 of the Convention, it was noted that everyone in Switzerland was entitled to report offences, which were then automatically investigated; it was asked what action was taken on the information laid in that way before the competent official and whether a torture victim enjoyed the same guarantees regardless of whether his complaint was heard by a court or by the administrative authorities.

101. In relation to article 14 of the Convention, information was requested on Switzerland's experience in the rehabilitation of torture victims.

102. In connection with article 15 of the Convention, reference was made to the complete freedom of the judge to decide according to his own intimate conviction on the validity of evidence submitted to him, and it was asked what judicial safeguards for that intimate conviction existed in the Swiss Penal Code. It was asked also whether there was any specific provision in Swiss legislation prohibiting the use of a truth serum.

103. Replying to the questions raised by the members of the Committee, the representative of Switzerland referred to the non-judicial machinery based on visits which was provided for by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. He also explained that the Swiss Criminal Code of 1942, which was applicable to civilians in peacetime, did not comprise the death penalty; however, the death penalty was applicable in wartime for certain specific offences. He added that, of the some 4,000 decisions handed down each year by the Federal Court, an average of about 50 decisions were related to human rights questions, and three or four to cases of individuals who invoked torture as an argument against acceding to an extradition request. The term "individual" referred to in the report also included aliens.

104. With regard to article 2 of the Convention, he stated that, under military criminal law, a subordinate who knowingly carried out an order which constituted a serious offence was liable to punishment not as an accessory, but as the perpetrator of the act on the same footing as his superior.

105. With reference to article 3 of the Convention, the representative pointed out that, in recent years, the Federal Court had ruled several times against the extradition of persons to a country where there were grounds for believing that the persons might be subjected to torture or inhuman treatment. In other cases, a request for extradition had been granted, but on certain conditions. The principle of _non-refoulement_ was embodied in article 45 of the Federal Asylum Act. The authorities responsible for implementing decisions with respect to asylum and _refoulement_ were bound to take into account any fresh information on the human rights situation in the country of a person whose request for asylum had been rejected, before implementing a _refoulement_ decision against him. With regard to the application of the European Convention on Extradition, he explained that its provisions were in the main applicable in domestic law since its entry into force for Switzerland and before the entry into force of the Federal Act on International Mutual Assistance in Criminal Matters. There had been no cases, therefore of, extradition which had been contrary to the European Convention. The principle of _non-refoulement_ was applied very conscientiously by the authorities responsible for taking the decision, even though that principle was sometimes difficult to apply since a good knowledge of the situation in the country in question was required.

106. With regard to article 4 of the Convention, the representative explained that the Federal Council had held that, although certain provisions of the Convention were directly applicable, most of them called for implementing measures at the domestic level. Article 1 of the Convention was not automatically applicable, but it could be a source of inspiration and serve as a bench-mark for administrative or judicial authorities responsible for applying the provisions of domestic law intended to give effect to the obligations arising from an international instrument. In that connection, he provided detailed information on the applicability of the relevant provisions of the Swiss Criminal Code. He further stated that the Criminal Code was applicable in all cases of offences under ordinary law, whereas the Military Criminal Code established penalties for specific offences not dealt with in the Civil Criminal Code, such as breaches of the law of war and offences committed during military service. In addition, he explained that the Swiss Criminal Code was federal whereas the codes of criminal procedure were cantonal. However, the cantons were subject to a number of obligations arising from federal legislation.

107. With regard to article 6 of the Convention, the representative stated that in his country there was no absolute limit on the duration of pre-trial detention. There were, nevertheless, a whole series of monitoring mechanisms which resulted in the duration of detention being limited in practice to what was absolutely necessary for the purposes of the investigation.

108. With reference to article 7 of the Convention, the representative pointed out that the Swiss Criminal Code had been revised in recent years to enable the Confederation to ratify a number of international instruments embodying the principle _aut dedere aut judicare_. Article 348 of the Criminal Code specified which jurisdiction, i.e. which canton, was competent to judge the person concerned and consequently what code of criminal procedure was applicable.

109. In respect of article 10 of the Convention, the representative stated that there was no difference in Switzerland between the civil police responsible for ordinary police duties and the so-called political police responsible for security. The latter did not have any additional powers. The Confederation had not taken specific measures to inform the public about human rights issues, but it

did subsidize some non-governmental and other organizations engaged in activities in that field. He added that in his country there had been no cases of prison staff found guilty of acts of torture.

110. Referring to article 11 of the Convention, the representative explained that solitary confinement was a disciplinary measure and that separation from other detainees was an exceptional measure that could be ordered by the judge during the preliminary investigation if he deemed it necessary for the purpose of the investigation. In recent years, however, the trend had been to ease that practice in a number of cantons, as public opinion was becoming increasingly alive to the need to protect the individual. No distinction on grounds of nationality was made in the application of any legislative or judicial provisions.

111. With regard to article 13 of the Convention, the representative pointed out that the record of reports of offences was forwarded to the authority of the canton which was competent to initiate criminal proceedings. Furthermore, there was no difference in character or in guarantees between administrative and judicial remedies. They were in fact complementary, inasmuch as an appeal to an administrative authority could lead to an appeal to a judicial body.

112. With regard to article 14 of the Convention, the representative referred to the contributions of his Government to the United Nations Voluntary Fund for Victims of Torture as well as to the provisions of the Federal Asylum Act, which provided for social security payments and disability allowances for asylum-seekers and refugees who had been subjected to torture or ill-treatment in their countries.

113. With reference to article 15 of the Convention, the representative pointed out that the judge's freedom to decide on the validity of evidence was not limitless, but subject to control, inasmuch as the Criminal Code made provision for the possibility of recourse to decide whether the evidence sufficed to establish the guilt of the individual concerned. He also stated that the use of a truth serum was contrary to the case law of the Federal Court and that the user could be prosecuted for coercion and bodily injury under the Criminal Code.

114. In their concluding remarks, the members of the Committee expressed appreciation to the representative of Switzerland for the quality of the answers given to their various questions. They also stated that the report submitted by the Government of Switzerland had made it possible to embark on a dialogue to strengthen efforts to combat all the effects of acts of torture, and that it could serve as a model both in form and substance for other reporting States.

Union of Soviet Socialist Republics

115. The Committee considered the initial report of the Union of Soviet Socialist Republics (CAT/C/5/Add.11) at its 28th and 29th meetings, on 15 November 1989 (CAT/C/SR.28 and 29).

116. The report was introduced by the representative of the State party, who explained that one of the main current trends in his country was the strengthening of the legal basis of public life and the improvement of the machinery for safeguarding the rights and interests of its citizens. Such legal reforms, as part of *perestroika*, included the updating of criminal law and criminal proceedings, correctional labour and administrative law, and measures to improve the functioning of law-enforcement bodies. The clearly defined goals of the reforms were the

supremacy of the law in all spheres of life in the State and the legal protection of the individual.

117. Legislation already in force provided for the non-admissibility of offences qualified as torture. Other such legal provisions were aimed at preventing the abuse of authority; in 1988, there had been 853 cases of beating, unlawful arrest, detention and unwarranted use of weapons, and more than 120 law-enforcement officials had been prosecuted for exceeding their authority or obtaining evidence from suspects by force. Greater emphasis was being placed on the training of such officials, and at present 93 per cent of prison officials had higher educational degrees.

118. Various draft laws on the prevention of crime and the treatment of prisoners had been actively developed and were under consideration by the Supreme Soviet. One such draft law envisaged an explicit ban on cruel or degrading treatment or punishment and would provide legal guarantees in that respect. At the same time, the legislation recognized the strict criminal responsibility of officials guilty of the offences defined in article 1 of the Convention, and penalties of up to 10 years' imprisonment could be imposed for exceeding official authority accompanied by violence or the use of weapons.

119. The text of the Convention had been published in the Foreign Ministry newsletter, Vestnik MID, and transmitted to all procurators responsible for supervising prison conditions. Questions relating to the implementation of the Convention had been covered by major newspapers.

120. The representative stated that the Soviet authorities would continue to examine the theoretical and practical aspects of the relevant international standards in order to implement the democratic and humane recommendations of the United Nations in the field of crime prevention and treatment of offenders.

121. The members of the Committee commended the Government of the USSR on its report and its representative on his oral presentation. They welcomed in particular the information concerning the debate on the proposed new criminal code. The report, although short, gave a great deal of information on the situation in the Soviet Union up to December 1988. They felt, however, that clarification on various points would enable them to obtain a clearer picture of the present situation and the effect of the proposed reforms for the future.

122. Members asked whether the Convention had the force of law, making it directly applicable by the competent authorities, and requested details on the legal mechanism for invoking it in the courts and on the number of times it had been so invoked. They asked for further information on the kind of offences listed in the various criminal codes, on the proposed amendments of the Code of Criminal Procedure, and on the regulations governing the maximum length, grounds and legal authority for pre-trial detention. Members wished to have an explanation of the procedure under which citizens could lodge complaints with State and public bodies and inquired whether, if the procurator failed to examine a complaint within three days, that fact would be taken into account if the complaint went to a higher court. They asked for clarification of the Soviet view on the possible abolition of capital punishment, on the maximum term for life imprisonment, and whether life imprisonment was not considered as inhumane treatment.

123. With specific reference to article 1 of the Convention, members inquired whether the USSR was party to any international agreement with provisions broader than those of the Convention.

124. With regard to article 2 of the Convention, members wished to know what precise law dealt with the inadmissibility of an order from a superior officer as a justification for torture. With reference to the special commission of the Politburo that was working to rehabilitate victims of repression of an earlier period, they wished to know what qualifications its members possessed, and why the Supreme Court was also involved in the work of the commission. It was also asked what measures had been taken to prevent violation of the law prohibiting the use of unauthorized methods in the investigation of offences.

125. In connection with article 3 of the Convention, members asked whether the USSR accepted the Convention as a legal basis for extradition to a State with which it did not have an extradition treaty, and whether the right of aliens to asylum would apply regardless whether a person was recognized as a refugee or not.

126. With regard to article 4 of the Convention, members sought clarification on the precise measures taken to remove law-enforcement officers who abused their authority, the results achieved so far and the sentences that had been imposed. They inquired whether the prosecution of 122 officials for exceeding their authority had been brought about as a result of complaints by individuals or by the action of the authorities. Further information was requested on the provisions that positively banned certain reprehensible acts, as mentioned in paragraphs 9 and 18 of the report.

127. With reference to article 6 of the Convention, members asked for information on the procedures for bringing a person to trial, and on the respective responsibilities of the procurator and the trial judge with regard to the rights of the accused. They wished to know whether letters sent to detainees were subject to examination, and whether the new laws on outside contacts for detainees would also apply to those detained against their will, as for example in psychiatric hospitals.

128. With reference to article 8 of the Convention, members wished to know what body was responsible for decisions on extradition or expulsion, and what were the major principles of the extradition agreements which the USSR had concluded with foreign Powers, particularly on legal assistance.

129. With regard to article 10 of the Convention, members asked whether the research carried out by the Institute of the Procuracy of the USSR had been incorporated in training programmes for civil and military law-enforcement officers, and for medical personnel working with detainees. They asked for information on the instructions and statutes containing standards for the humane treatment of offenders. They requested information on the level of public awareness of human rights and safeguards against torture, the work being done to increase that awareness, and whether the Soviet people organized themselves to increase such protection of their interests. Information was sought on the situation with respect to the abuse of psychiatric medicine.

130. With reference to article 11 of the Convention, members asked for details of specific cases where physical restraints, such as handcuffs or straitjackets, were used, on how their use was monitored, and whether other restraints were permitted under the law. They wished to know whether solitary confinement was permitted in

law, whether the measure was used in practice, and what was meant by the worsening of prison conditions as a punishment in accordance with the law, as mentioned in paragraph 31 of the report. Referring to the correctional labour legislation, they wished to know whether the rigorous labour camps, or "gulags", had been abolished.

131. With regard to article 12 of the Convention, it was asked whether the allegations of torture made by 11 Armenians in Nagordny Karabakh had been investigated.

132. With reference to article 13 of the Convention, members requested further details on the right of appeal of those in custody, in pre-trial detention or psychiatric hospitals, whether there were systematic controls on such detention, and whether they were carried out by the institutions themselves or by an external authority.

133. In connection with article 14 of the Convention, members requested further information and statistics on the cases where compensation had been provided to victims of illegal prosecution and torture, and how often victims of ill-treatment sought compensation and the prosecution of offenders.

134. With reference to article 15 of the Convention, members wished to know whether legislation existed to prohibit the obtaining of statements by violent means other than "force or coercion". They asked for information on any cases where verdicts had been quashed by the courts on the grounds that the evidence submitted had been obtained by force, threats or other illegal measures. It was inquired whether the regulations forbidding the obtaining of statements by force applied to the security police in the same way as to regular police officers, whether the security force was answerable to the courts and, if not, whether mechanisms existed to investigate allegations of torture by the security force.

135. Lastly, with reference to article 16 of the Convention, members requested an exact definition of cruel, inhuman or degrading behaviour and the nature of penalties for such offences.

136. In response to the questions raised by members of the Committee, the representative declared that the Soviet State had no difficulty in implementing its obligations under the Convention, since its provisions entirely coincided with Soviet legislation. Although the Convention could not be invoked in court, it could be referred to in the course of judicial proceedings by a judge or procurator if a crime came under the heading of torture as defined in the Convention. Torture was defined in the criminal codes of the Russian Federation and the Union Republics as the exceeding of authority or administrative power accompanied by acts of violence or torture or degrading acts, the punishment for which was 10 years' imprisonment. Draft legislation on criminal procedure was among the 30 draft laws and bills currently being examined by the legislature. That legislation had been discussed by the people of the country, and some of their comments were reflected in the final version of the draft to be considered in 1990. He explained that the normal length of pre-trial detention was two months, which could be extended to nine months by procurators of the districts, regions or republics and, exceptionally, to 24 months by the Procurator General; an extension beyond 24 months could be decided only by the Supreme Court. Unlawful extension of such detention was administratively punishable. The Supreme Soviet had recently adopted a law giving citizens the right to make complaints against public officials, and providing a maximum delay of 30 days for the consideration of such complaints.

With regard to the death penalty, he stated that it had been repealed three times and then reintroduced. At the present time, opinions diverged on the question, with the public overwhelmingly in favour of its retention as an exceptional measure because of the growth of crime in the USSR. Its use had been strictly limited to serious crimes against the individual and the State and the number of such crimes had been reduced from 19 to 8. New legislation on the issue was currently being considered by the Supreme Soviet. He stated that differing views had also been expressed on the question of life imprisonment, which at one time had carried a maximum term of 25 years, but had not resulted in a reduction of serious crime.

137. Turning to the specific question on article 1 of the Convention, the representative stated that the Soviet Union was not a party to any agreement or convention with provisions stricter than those of the Convention.

138. In response to questions raised by members in connection with article 2 of the Convention, the representative stated that the gravity of the crime of torture meant that its perpetrators would be held criminally responsible, and penal legislation would include a provision stipulating that an order given by a superior should not be executed if it involved the commission of a crime. He explained that the special commission of the Politburo had been established in view of the extreme importance of the rehabilitation of the victims of mass repressions of the past. A number of legal experts participated in the work of the commission, which could not exercise judicial functions or take judicial decisions but could call the attention of the proper authorities to the possibilities of according compensation to victims of such repressive acts. A recent decree issued by the Ministry of the Interior provided guarantees for the protection of detainees against torture and other cruel, inhuman or degrading treatment. Another decree, promulgated in 1989, established minimum standards for conditions of detention which were in line with the Convention.

139. With reference to questions raised in connection with article 3 of the Convention, the representative declared that the Soviet Union would not return a person to a country if he or she risked becoming the victim of torture. His Government had not ratified the international conventions on refugees, but in practice it complied with the norms of internqational law and collaborated with the United Nations agencies concerned with refugees.

140. In response to questions raised in connection with article 4 of the Convention, the representative stated that, during the 1930s, 1940s and 1950s, gross violations had been committed by 3,400 former members and heads of the internal NKVD and the Ministry of State Security, who had been condemned and punished, some being executed. A further 2,370 staff members of those bodies had been punished, dismissed and deprived of pensions. The current law-investigatory bodies did not contain a single person who had been involved in the abuses of that period. He added that 122 persons had recently been brought to trial for abuse of authority and that 5,600 persons had been subjected to disciplinary action, including over 3,500 who had been dismissed from the internal service of the country.

141. In response to questions asked in connection with article 6 of the Convention, the representative said that the investigation of criminal matters normally could not continue for longer than two months, and could be extended only under special circumstances by the local procurator. Any official violating that process would be subject to disciplinary action. He explained that a procurator was obliged to

institute court proceedings and carry out investigations, and a judge could institute criminal investigations only if a crime became known to him at any stage of a judicial investigation. He stated that detainees' correspondence could be examined, regardless of where they were held or at what stage of prosecution; that was done as a matter of security and was not considered an infringement of the rights of the detainees. Visits by relatives and close friends were permitted during preliminary detention with the agreement of the procurator investigating the case.

142. In reply to questions raised in connection with article 8 of the Convention, the representative indicated that decisions on extradition were the responsibility of the Presidium of the Supreme Soviet. Since the mid-1970s, the Soviet Union had concluded more than 20 treaties of extradition, including legal assistance, with different States.

143. With regard to the questions raised in connection with article 10 of the Convention, he stated that the research institute of the Procuracy of the USSR was designed to ensure a scientific basis for law-enforcemnt bodies; it worked on theoretical problems of law and order and the preparation of new texts on criminal proceedings and procedural laws. Most of the State's laws had been prepared by the institute. The training of professionals in the judicial and penitential systems was conducted in establishments of higher education and in universities, and at the middle level in specialized institutes and educational establishments. He indicated that public awareness in the field of human rights had increased so much in recent times that in December 1989 the authorities would be issuing 2,000,000 copies of a compendium of all existing international instruments covering human rights. He added that one of Moscow's daily newspapers, with a circulation of more then 7,000,000, had recently published responses made to a series of questions posed by journalists on the Convention and on the Committee against Torture. There were hundreds of non-governmental organizations in the country concerned with human rights questions in all spheres of life. Anyone wishing to do so could form an association, print publications and hold meetings; there were no statistics on such associations because of their informal nature. The representative stated that, as of 1988, all psychiatric institutions, formerly run by the Ministry of Internal Affairs, had been placed under the jurisdiction of the Ministry of Health. He added that earlier in the year the USSR had been readmitted to the World Psychiatric Assembly, and that psychiatric institutions in the country had been visited by a group of American psychiatrists.

144. With reference to questions raised under article 11 of the Convention on physical restraints, the representative stated that handcuffs were used to prevent unruly behaviour or physical attacks by detainees, and that their use was controlled by the supervisory officer in the place of detention. Straitjackets were used as an extreme measure to quieten unruly behaviour when other measures were impossible, only in special areas designed for that purpose. The representative stated that he knew of no single incident of their use during the previous 10 years and that this type of restraint was the subject of criminal legislation currently in preparation, which would ban their use. Clubs were used to quell disturbances by detainees when there was a direct threat to the life and health of persons working in the places of detention, and their use was regulated by special decree. Every incident where any type of physical restraint was used had to be reported to the local procurator, and unlawful use of such restraints was subject to disciplinary action. Solitary confinement was used as a disciplinary, not a correctional measure, and then only in the strict régime colonies and not in

any other circumstances; the maximum period for such confinement was one year. The strict observance of the laws for the control of and conditions within places of detention was regulated by the code of laws on correctional labour. Prison officers responsible for monitoring places of detention regularly inspected such institutions and took measures to eliminate any irregularities. The representative further explained that the correctional labour camps of the 1930s had been established by the People's Commissars and controlled by the internal security agency (SPU). Such camps had ceased to exist in 1956, when the principle of rehabilitation had been established and an amnesty granted. The correctional labour facilities existing in the USSR today were entirely different from the old-style camps in structure and in their treatment of and conditions for detainees.

145. With regard to the question raised under article 12 of the Convention, the representative explained that a state of emergency had been declared in the region of the Nagordny Karabakh because of the seriousness of the situation; that had been in line with the International Covenant on Civil and Political Rights, from which no derogations had been made. Those arrested had been released after investigation.

146. With reference to the questions raised in connection with article 14 of the Convention, the representative declared that articles 129, 136 and 137 of the Criminal Procedure Code of the Russian Federation, and similar provisions in the Republics, covered compensation for damage resulting from the unlawful activities of State officials. Moral damage was fully compensated by the State, regardless of the guilt of the person involved. Compensation was generally not paid for non-material damage, but psychological health was taken into account and the State would do all it could to eliminate adverse effects through a rehabilitation process carried out by free medical assistance.

147. With reference to the questions asked under article 15 of the Convention, the representative stated that the security forces, under the Committee for State Security, had a need for confidentiality, but that there was no secret police, as such, in the USSR.

148. In concluding consideration of the report, the members of the Committee thanked the representative of the USSR for the detailed information provided, which revealed that the Government of the USSR was taking seriously its obligations under the Convention. They were impressed by the magnitude of the reforms under way in the country, especially in the penal procedures. While acknowledging that the results of such reforms might not be apparent for some time, they requested the delegation to supply, in its second periodic report, as many concrete examples of the results of the reforms as possible, and particularly of the results of trials of persons involved in the abuse of power. They noted also that, although many thousands of persons had been punished for such abuse of power, the numbers involved implied that there was still some irregularity within the system. Furthermore, they expressed concern about the use of solitary confinement, which seemed particularly severe, and also about the ban on detainees' correspondence.

149. The representative assured the members of the Committee that all the questions and comments made during the meeting would be taken into account during the preparation of the second periodic report, particularly the questions on solitary confinement, which was an issue which would be considered very seriously in the country's move towards a more open system of democracy.

Argentina

150. The Committee considered the initial report of Argentina (CAT/C/5/Add.12/Rev.1) at its 30th and 31st meetings, held on 16 November 1989 (CAT/C/SR.30-31).

151. The representative of the State party introduced the report and stressed the determination of the constitutional Government of Argentina faithfully to fulfil its undertakings with respect to human rights at both the domestic and the international levels. In connection with the Convention, she informed the Commiteee about the Latin American course on the implementation of human rights instruments and the administration of justice which had been held at Buenos Aires in October 1989 with the support of the United Nations. She also referred to the main legislative measures taken by Argentina to abolish torture and to make it a criminal offence, and pointed out that Argentina had acceded to the Inter-American Convention to Prevent and Punish Torture, which had entered into force on 30 April 1989. Furthermore, her Government had co-sponsored the resolutions adopted by the Commission on Human Rights concerning torture and had supported the action of the Special Rapporteur of the Commission on Human Rights on questions relating to torture. Before the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had entered into force for Argentina, the Supreme Court had declared that it had full force in creating international responsibility for the State.

152. The members of the Committee welcomed the report, which gave evidence of a return to a legal system respecting human rights in Argentina after a distressing pereiod of dictatorship, and thanked the representative for her introductory statement.

153. Questions were raised by members of the Committee with regard to the general framework in which the Convention was implemented in Argentina. It was noted that articles 3, 8 and 9 ofthe Convention did not seem to have any equivalent in Argentine legislation, and it was asked whether international instruments such as the Convention were directly applicable under domestic law, whether the current national Constitution was the same as that in effect under the military régime, what was the relationship between the Convention and the Constitution and between the Convention and the provincial constitutions, how long the 1949 Geneva Conventions and their 1977 Additional Protocols relating to the protection of victims of armed conflicts had been in force in Argentina, how they were implemented and whether the national and provincial constitutions were in conformity with those instruments. It was recalled that States parties had an obligation to take preventive, enforcement and reparative measures under the Convention. In that connection, it was asked what the position of the Argentine Government was with regard to acts perpetrated before the entry into force of the Convention on 26 June 1987, whether it considered that the Convention did not apply to prior acts of torture and whether Argentina experienced any difficulties in carrying out its obligations under the Convention. It was also asked whether the provisions of the Penal Code mentioned in paragraph 15 of the report were not incompatible with those of Act No. 23,097 of 1984 amending the Penal Code.

154. With respect to article 2 of the Convention, members of the Committee wished to know whether the prohibition of torture in Argentina was as broad as envisaged under the Convention, especially in relation to threats to third parties, whether any provision had been made for direct reference to the Convention in the courts,

and what new laws, guidelines and judicial sanctions had been put in place to prevent acts of torture. They also asked whether the Under-Secretariat for Human Rights established by the Government included lawyers, whether it was competent to carry out investigations concerning violations of human rights and, if so, whether there had been any conflict with other State bodies, including the police, with similar responsibilities. In connection with paragraph 3 of article 2 of the Convention, reference was made in particular to Act No. 23,521 of 4 June 1987, and it was asked whether the so-called "due obedience law" was in conformity with the Argentine Constitution in force at the time of its enactment and with the Geneva Conventions to which Argentina was a party, and how many people responsible for acts of torture had been arrested, detained or tried before and since the promulgation of Act No. 23,521.

155. With regard to article 3 of the Convention, it was inquired whether Argentina had taken specific measures to prevent extradition or refoulement of persons to another country where there was danger of torture being inflicted. In that connection, the attention of the representative of Argentina was drawn to the specific case of five persons who opposed extradition to Chile because they alleged that they risked being tortured in that country.

156. With reference to article 4 of the Convention, it was asked whether there were any statistical data concerning the number of government officials who had been prosecuted for allowing or perpetrating torture, what was the maximum term of imprisonment laid down in the Penal Code for the offence of torture and whether life imprisonment could be imposed. It was noted that penalties were provided when the offence was constituted by failure on the part of a judge to prosecute and punish the crime of torture, and it was asked who initiated proceedings against the judge in such a case and in what court, and whether judges had any kind of immunity.

157. In connection with article 5 of the Convention, more information was requested on how Argentina assumed a genuine universal jurisdiction over acts of torture and on the necessary judicial measures to be taken to that effect. It was noted, in particular, that the Penal Code also applied to crimes committed abroad by agents or employees of Argentine authorities in the discharge of their duties, and it was asked who brought cases against such persons before the Argentine courts and whether such a case had yet been brought.

158. In connection with article 6 of the Convention, it was asked who was empowered to carry out detentions or arrests after a complaint had been received against officials having that authority, and whether there were any time-limits for pre-trial detention without the right to correspondence and visits.

159. With regard to article 7 of the Convention, it was asked whether Argentine law provided that Argentine nationals could not be extradited for acts of torture and, if such a provision existed, what authorities in Argentina were competent to judge relevant cases.

160. Turning to article 11 of the Convention, members of the Committee wished to receive information about the treatment, rights and privileges accorded to persons in custody and the number of cases of torture or inhuman or degrading treatment which had been brought before the courts. They also wished to know whether systematic inspections were carried out in places of detention in Argentina and whether the civil courts exercised effective control over military personnel, particularly when such personnel held individuals in custody.

161. With regard to article 12 of the Convention, reference was made to information received by members of the Committee about a confrontation between civilians and members of the armed services that had taken place in La Tablada, in the Province of Buenos Aires, on 23 and 24 January 1989. According to that information, the confrontation had resulted in deaths, and bodies bearing marks of torture had been found. It was asked in that connection whether the information was accurate and whether the offenders had been brought to trial.

162. With reference to article 14 of the Convention, members of the Committee wished to know what action Argentina had taken in the area of the psychiatric rehabilitation of torture victims of the earlier period of the dictatorship, whether there was at present, after the promulgation of the "due obedience law" and the "finality act" of 24 December 1986, any way for those who had been victims of torture during the prior period to obtain redress, whether amnesty had allowed torture victims to seek civil compensation and, if so, in how many cases civil compensation had been granted for acts of torture committed under the dictatorship. It was also asked whether there was a possibility of asking for civil compensation before a criminal court as well as a civil court, whether the victims were required to institute civil proceedings within prescribed time-limits in order to obtain compensation, or whether the Argentine Government, recognizing that it had a civil responsibility towards the victims, had undertaken to compensate them all in one form or another. Furthermore, members of the Committee wished to know whether, in addition to the financial compensation provided for in article 29 of the Argentine Penal Code, there was a possibility of medical rehabilitation for torture victims, whether positive law in Argentina provided for compensation to persons who had been held in pre-trial custody or had benefited from an order dismissing the proceedings when they had suffered serious prejudice, whether the two bills proposing a reform of the criminal procedure which had been submitted to the National Congress provided for compensation for victims of torture, and whether systematic efforts were being made by the Government to document and analyse what had happened to victims of torture.

163. With reference to article 15 of the Convention, it was asked whether there was a penalty in law for obtaining confessions by force or by torture.

164. In reply to the questions raised by the members of the Committee, the representative of Argentina stated that, under Argentine legislation, any individual could directly invoke the Convention before the courts since, under article 31 of the Constitution, it formed part of domestic legislation on the same footing as the laws of the nation. The representative further explained that article 5 of the Constitution established the conditions under which the provincial constitutions were safeguarded in so far as they conformed to the national Constitution. The Constitution at present in force was the same as during the military dictatorship from 1976 to 1983, but its application had then been modified by a national reorganization law. The Geneva Conventions of 1949 had been ratified by Argentina on 18 September 1956 and the Additional Protocols of 1977 on 26 November 1986. Since there was at present no international or national armed conflict in Argentina, only the provisions of those Conventions concerning the promotion of international humanitarian law were in effect. With regard to acts perpetrated before the entry into force of the Convention for Argentina, the representative stated that, under article 18 of the Constitution, international instruments, particularly those containing penal provisions, were not applied retroactively, and that that was also in conformity with article 28 of the Vienna Convention on the Law of Treaties. With regard to the apparent conflict between

the Penal Code and Act No. 23,097, the representative explained that, alghough the norms of both were applicable, only one would be applied in practice. In reality, the provisions of the Act were more specific and prevailed over the general provisions.

165. Turning to article 2 of the Convention, the representative stated that the domestic legislation of Argentina contained provisions of much wider scope than those of the Convention; under the Penal Code, in particular, acts of torture were assimilated to acts of homicide. She then explained that two Under-Secretariats for Human Rights had been established in Argentina primarily to ensure that the investigations into cases of disappearance and abduction of Argentine children were continued and to locate and identify any bodies found. They had also been set up as a preventive measure to ensure that what had taken place in the country in the past never occurred again. She provided detailed information on the activities of the Under-Secretariats and pointed out that the Under-Secretariat for Human Rights established within the Ministry of the Interior was responsible for receiving and analysing reports of violations of human rights on the same footing as a police officer, a judge or a prosecutor, but that it did not conflict with other State bodies. It was one more link in the chain for receipt of complaints. The representative further stated that every piece of Argentine legislation was in conformity with the national Constitution and with the international instruments ratified by Argentina.

166. In connection with article 3 of the Convention, the representative provided detailed information on the case of the five Chileans detained in Argentina who had been in danger of extradition to Chile. She explained the nature of the offences they had committed and the sentences imposed on them by Argentine law, and stressed that the Argentine Government had granted all the persons concerned refugee status to protect them from extradition to Chile, where they would have been in danger of torture.

167. With regard to article 4 of the Convention, the representative informed the Committee that the offence of torture could carry a sentence of life imprisonment if the act had been particularly cruel and had led to the victim's death. In other cases, the penalty varied between a minimum of 8 years and a maximum of 25 years of imprisonment. Two new articles, 144 quater and quinquies, had been introduced in the Penal Code by Act No. 23,097, dealing with various derelictions of duty by officials, including judges, with respect to torture. However, judges could be prosecuted only if the immunity attached to their function was lifted.

168. Referring to article 5 of the Convention, the representative stated that the Argentine Supreme Court of Justice had already had occasion to apply the principle of universality in the case of an offence covered by international instruments, but that it had not so far had to take a decision on any case of torture.

169. With regard to article 6 of the Convention, the representative stated that every citizen or inhabitant of Argnetina who considered himself or a person he knew to be a victim of an offence could report that offence. Under article 257 of the Code of Penal Procedure, the maximum length of pre-trial detention without the right to correspondence and visits was three days.

170. With reference to article 11 of the Convention, the representative quoted articles 677, 678 and 679 of the Code of Penal Procedure regulating the treatment of detainees in prison. She added that, upon instruction of the Federal Court, the

supreme legal authority of Argentina, every detainee had to undergo a full medical examination at the time of his imprisonment on the order of the judge. Military courts dealt with offences of an exclusively military nature that were not covered by the Penal Code.

171. In connection with article 12 of the Convention, the representative provided detailed information on the confrontation of civilians and military forces in La Tablada. She stated that the attack had been carried out by 50 armed civilians against military installations to obstruct the maintenance of constitutional order and, on the pretext of defending it, to undermine the establishment. Upon complaint of some of the participants in the attack, an investigation had been ordered to establish whether there had been any unlawful violence or acts of torture and to punish any persons found guilty. The Committee would be provided with the full text of all the judgements rendered following the events of La Tablada.

172. With regard to article 14 of the Convention, the representative pointed out that the so-called "finality act" and the "due obedience law" only had the effect of limiting penal proceedings against individuals responsible for political offences. In fact, all unlawful acts committed on the order of a superior remained unlawful and the victims could take combined civil and penal action to obtain compensation even in the event of an amnesty. Under the Civil Code, the time-limit for a civil action was two years. That limitation could be suspended in a case of physical incapacity on the part of the person concerned. The representative further explained that, except in one case, no civil proceedings had been instituted by persons who had been victims of torture under the military dictatorship in order to claim compensation, mainly because it was extremely difficult for anyone who had suffered torture to claim monetary compensation and also because victims did not wish to destroy themselves by reviving the memory of their suffering. However, some persons had instituted civil proceedings to claim compensation because they had been victims of unlawful detention. Furthermore, without prejudice to civil claims for compensation, the Argentine Government had passed an Act granting pensions to members of the families of disappeared persons. At the beginning of 1989, 4,800 appplications for a pension had been submitted and granted. In general terms, compensation under the Penal Code and the Civil Code could also cover the cost of any medical treatment for the victim, and Argentine law also provided for the right to compensation for injury suffered by anyone because of his detnetion in custody if the charge against him had been dismissed. The proposed reform of the criminal procedure did not affect compensation for victims of torture.

173. In connection with article 15 of the Convention, the representative referred to legal provisions, in particular article 316 of the Code of Penal Procedure, under which confessions made under torture or any type of physical or psychological pressure were considered null and void.

174. In concluding the consideration fo the report, the members of the Committee expressed satisfaction at the measures that had been taken by Argentina in the field of legislation and organization to protect human rights and thanked the representative of the Argentine Government for the information provided. The members also noted with satisfaction that Argentina would provide the Committee in writing with the statistical information it had requested and with the texts of the judgements rendered following the events of La Tablada.

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German Democratic Republic

175. The Committee considered the initial report of the German Democratic Republic (CAT/C/5/Add.13) at its 30th and 31st meetings, held on 16 November 1989 (CAT/C/SR.30 and 31).

176. The report was introduced by the representative of the State party, who stated that far-reaching changes were taking place within his country, many of which were closely linked with human rights. He provided additional information to the report, which had been prepared one year previously, on important amendments to the country's legislation.

177. He explained that the relevant provisions in the Penal Code had been brought into line with articles 1 and 16 of the Convention. Furthermore, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment had been explicitly included in article IV of the Penal Code, under the Fifth Criminal Law Amendment Act of 14 December 1988. The new legal provisions of the Act had been published in the Law Gazette of 28 December 1988, and had been comprehensively covered in the mass media. Under a newly created article 91 a of the Penal Code, the definition of the term "torture" was now incorporated in national law. The Code of Criminal Procedure prohibited the use of confessions made under coercion, and any legal official or member of an investigatory body using such means was liable to imprisonment for a term of up to five years. Similarly, under the new article 91 a of the Penal Code, abuse of authority carried a penalty of imprisonment for a term of up to 10 years.

178. The members of the Committee welcomed the recent legislative changes described by the representative, particularly the legal ban on torture. The report, although brief, had been admirably supplemented by the oral presentation, and the annexes, containing the texts of relevant laws, were very helpful. Members requested further clarification on various issues relating to the implementation of the Convention in the German Democratic Republic.

179. They asked, in general, whether additional domestic legislation was required to give international instruments the force of law in the country. Clarification was requested on the difference between State courts and social courts, and on their operation and composition. An explanation was sought on whether a complaint constituted an appeal against a court decision, and whether there were cases where the law forbade complaints being lodged against the decisions of a court. Members asked what machinery existed, under the Act of Petitions, for citizens to exercise the right to co-determination and participation in society; what specific rights the Act conferred on the citizen; and what impact it had on efforts to combat torture. It was inquired whether the right, under article 50 of the Constitution, of all citizens to the assistance of State and social organs for protection of their liberty and inviolability also applied if that right were infringed by a public official. Members wished to know what measures had been taken by the Government against citizens or foreigners who might be guilty of nazism or militarism; whether extreme instances of xenophobia were punishable in the same way as acts of torture and whether they were exempt from statutory limitations in the same way as war crimes; and whether punishment for crimes against peace and humanity also applied to all crimes with an international dimension. Members asked whether the list of various types of evidence admissible in criminal cases, provided in annex III of the report, was exhaustive. Information was requested on the effect of the Government's decision to abolish the death penalty in 1987, and

its current views on the issue. Members also wished to know whether the principle of equality of all citizens applied in time of war or other socio-economic circumstances.

180. With reference to article 2 of the Convention, members asked whether the penalties for coercive acts committed by judges or members of investigatory bodies were decided by the presiding judge.

181. With regard to articles 3 and 5 of the Convention, members inquired whether the German Democratic Republic assumed universal jurisdiction over torturers, and whether there had been actual cases of refusal to expel or extradite persons to other States on the grounds that they might be subjected to torture in those States.

182. In connection with article 4 of the Convention, information was sought on whether acts of torture were punished whatever their gravity. Members asked whether any law-enforcement officials had been prosecuted for alleged abuse of authority. They sought clarification of what was meant by arrest in the case of disciplinary offences, as provided for in article 32 of the Penal Execution Act, and requested further information on the disciplinary offences in question.

183. With reference to article 6 of the Convention, members inquired whether measures had been taken to implement that article, in particular to prevent a person suspected of torture from leaving the country. Members wished to know who had authority to order detention. They also requested information on the maximum length and conditions of incommunicado detention. It was also asked whether measures had been taken to implement article 7 of the Convention.

184. With regard to article 10 of the Convention, members wished to know how that article was implemented in the German Democratic Republic, particularly with regard to the training of medical personnel in legislation on the crime of torture or ill-treatment, and whether there had been any attempt to disseminate information on such legislation in schools.

185. With regard to article 11 of the Convention, members requested specific information on the following points: arrangements for the medical examination of detainees; monitoring of the treatment of detainees; whether prisoners were punished for refusing to work; whether visits by relatives were allowed in cases of illness; punishment for disciplinary offences in prison and whether an appeal could be made against such punishment; whether legislation had been brought into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, particularly solitary confinement and restricted diets; and rehabilitation measures on release from prison.

186. With reference to article 14 of the Convention, members sought clarification on how the State authorities reconciled being party to an action for damages with the fact of providing compensation for victims in such cases. It was asked why compensation was regulated in advance by articles 1 and 3 of the Act on State Liability rather than in accordance with the gravity of the damage suffered. Members wished to know whether any time-limits were placed on claims for compensation, and why such compensation could be sought only from the body or institution concerned and not from the individual responsible.

187. Finally, with regard to article 15 of the Convention, concern was expressed about confessions obtained under torture being accepted by the courts, and members

wished to know in particular how article 243 of the Penal Code dealt with offences of coercion, and the penalties involved, and whether a person could be prosecuted simultaneously for two offences.

188. In his response to the general questions raised by members of the Committee, the representative explained that social courts in the German Democratic Republic ruled on minor offences; they were not empowered to take decisions on abuse of authority, and their functions were set out in a special Act passed in 1982. On the complex question of appealing against a judicial decision, he stated that the law on criminal procedure provided for a uniform system of appeal and made no distinction between an appeal and a request for annulment. He further explained that article 305 of the Code of Criminal Procedure only excluded the possibility of contesting a decision by the Supreme Court on an appeal, in which case there could be no recourse. The representative declared that, with few exceptions, all legal proceedings in the punishment of Nazi crimes and war crimes had now been concluded and that the law had thus fulfilled its anti-Fascist function. In all, more than 12,000 persons had been convicted of war crimes and crimes against humanity. He stressed that offences related to neo-nazism were severely punished. He indicated that the principle of universality applied to all international crimes covered by the draft code of crimes against peace and humanity prepared by the International Law Commission; and that under article 80 of the Penal Code aliens could be prosecuted, in certain circumstances, for an act committed abroad, taking into account political factors and the close co-operation that should exist between the State and public opinion. The representative explained that article 24 of the Code of Criminal Procedure provided for a full list of admissible evidence in courts, although in the revised Code the prohibition of certain evidence would be regulated more strictly. He declared that, following the abolition of the death penalty in 1987, there had been no increase in the number of serious crimes, including homicide, and that the measure had had a favourable effect on the political climate.

189. In response to questions raised under articles 3 and 5 of the Convention, the representative stated that there had been no case of extradition in recent years. Some provisions on extradition in mutual assistance treaties on criminal matters had been concluded with a number of countries; such provisions did not allow extradition for cases of torture within the meaning of the Convention.

190. In reply to questions concerning article 4 of the Convention, the representative stated that, following the mass demonstrations of October 1989, 338 complaints of ill-treatment had been lodged. Subsequently, 18 investigations had begun, and one police chief had been suspended from duty. The Public Prosecutor was required to report to the People's Chamber on the results of the proceedings instituted.

191. In his response to questions raised concerning article 6 of the Convention, the representative indicated that only judges could issue warrants for detention and that the law in the German Democratic Republic made no provision for a maximum length of pre-trial detention, although in general this did not exceed three months. Under the revised Code of Criminal Procedure there would be a review of arrest and detention procedures within the meaning of habeas corpus, and article 126 of the Code provided that any person arrested must be brought before a judge within 24 hours for a decision on pre-trial detention or release. He explained that there was no incommunicado detention in the country.

192. With regard to questions raised in connection with article 10 of the Convention, the representative stated that members of the police force and prison staff received appropriate training on the rules of conduct to be respected in the exercise of their functions, and that continuous training was provided on a scientific basis. Special attention was given to training medical personnel to detect signs of torture, and prison establishments employed specialized physicians able to recognize the effects of violence and the after-effects of torture.

193. Turning to the specific questions raised under article 11 of the Convention, the representative explained that, although there was no incommunicado detention in the German Democratic Republic, detainees could be held in separate quarters for health or personal reasons or, in cases of violence or attempted escape, could be isolated for not more than 15 days, when an attorney had to be informed. Their treatment in such circumstances was the same as for other prisoners: the detainees received regular medical checks and were informed of their right to contest the measures applied to them and to submit petitions under the Penal Execution Act. Solitary confinement was a disciplinary measure and could not exceed 21 days, before which a medical check was undertaken; if illness occurred during confinement it had to be discontinued; visits were not prohibited. He emphasized that all detainees were medically examined before going to trial and a committee was to be established responsible for monitoring the activities of the police and security organs. Under articles 63 and 64 of the Penal Execution Act, the Prosecutor's services were responsible for monitoring the living conditions of prison establishments, and article 34 of the Act covered living conditions, including food, exercise, medical care, leisure time, paid work and the practice of religion. He stated that, under article 2 of the Act, work for detainees was not only a right but also a duty and therefore disciplinary measures could be applied for refusal to work. Finally, he stated that since 1977 there had been a specific law governing the rehabilitation of detainees.

194. In response to questions raised under article 14 of the Convention, the representative indicated that, in cases of abuse of authority by State officials, compensation was granted under the Act on State Liability, and that, within four weeks following a finding of damage, the injured party received compensation paid by a State insurance fund. Following the recent events which had resulted in abuse of authority, the Public Prosecutor had stated publicly that the victims of such abuse would be compensated for the physical and psychological damage suffered in so far as the State authority was involved.

195. In concluding their consideration of the report, the members of the Committee thanked the members of the delegation for their co-operation and for the information provided in the report and in their responses to questions. The progressive nature of certain standards, in force or envisaged, was impressive, particularly the creation of a monitoring committee on police activities, the abolition of incommunicado detention, and the advanced prison system. The members stated that, in the changes which were taking place in the country in terms of greater respect for human rights, the provisions of the Convention would provide a firm support for the ongoing democratic process.

196. The representative emphasized the fundamental importance of exchanges of information and experience in the field of human rights and stated that the German Democratic Republic could now consider making the declaration under article 21 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Byelorussian Soviet Socialist Republic

197. The Committee considered the initial report of the Byelorussian Soviet Socialist Republic (CAT/C/5/Add.14) at its 32nd and 33rd meetings, held on 17 November 1989 (CAT/C/SR.32-33).

198. The report was introduced by the representative of the State party, who stated that, within the process of restructuring taking place in his country, a great deal of work was under way to guarantee the supremacy of the law. Proposed reforms included a radical review, codification and systematization of Byelorussian legislation, with particular attention being paid to the legal protection of the individual and the guarantee of his political, economic and social rights.

199. He outlined the major developments in the implementation of the Convention that had occurred since the preparation of his Government's report at the end of 1988. The adoption of the Status of the Courts Act in August 1989 had reinforced the independence of the courts and established the procedure for the election of judges. The Principles of the Judicial System, adopted in November 1989, provided for the participation of defence lawyers at the earliest stages of an investigation and further strengthened guarantees prohibiting torture and other illegal methods of investigation. In addition, two important drafts had been released for public debate, the draft fundamental principles of criminal legislation and the draft principles of criminal procedure; these drafts covered Soviet and Union Republic legislation and extended legislative guarantees of human rights. Far-reaching changes to the Correctional Labour Code were also being planned.

200. The members of the Committee thanked the delegation for the full and succinct report, which contained an impressive range of reforms, and for the oral presentation of recent developments in the rule of law in the Republic. They requested elaboration of several points in the report in relation to the implementation of the Convention.

201. Members asked, in general, whether the Convention was incorporated in existing domestic legislation, and whether the Criminal Code contained a definition of torture in line with article 1 of the Convention. They wished to know what amendments to the decree of 1968, on procedures for examination of appeals against unlawful acts, had been instituted by the revised decree of March 1980. They requested information on the penalties that existed for refusing to institute criminal proceedings; whether it was possible to lodge an appeal against the unlawful institution of such proceedings; and whether it would be possible in future to refer cases to a court rather than a procurator. Members inquired whether measures were planned to disseminate the new legal provisions on human rights throughout the country. They also asked for clarification on the Government's position on capital punishment, in view of the reduction in the number of crimes to which such punishment was applied in the USSR.

202. Members asked for information on how article 3 of the Convention was being implemented in the Republic, and in particular whether the right of asylum, under article 36 of the Constitution, would apply even to persons who had violated the Convention. They also asked whether asylum would be granted to a common criminal if there were grounds for believing that he would be subjected to torture if extradited to another State.

203. With specific reference to article 4 of the Convention, members requested clarification of the relationship between all-Union legislation and Byelorussian legislation on anti-torture measures, and whether new provisions were planned. They asked what legislative and practical measures had been taken to preclude the possibility of torture. Information was sought on the acts for which public officials might be prosecuted for obtaining statements by force; whether penalties for such offences were established under articles 166 to 168, 175 and 179 of the Criminal Code; and whether further changes in the Code were envisaged. They inquired whether there had been any prosecutions for acts of torture in the Republic, and whether statistics were available on the number of trials involving officials who had abused their authority. They wished to know whether the provisions of the Military Penal Code applied when torture was perpetrated by military personnel.

204. With regard to article 5 of the Convention, members wished to know under which authority citizens, or stateless persons, committing crimes abroad would be brought to trial.

205. With reference to article 6 of the Convention, members asked for clarification on the legally defined grounds on which a person could be held in custody. They asked whether the judge or the procurator authorized the continued detention of an accused person. An explanation was sought on the difference in regulations between holding persons in preliminary custody and in short-term detention, the time-limits applicable in each case, and whether there had been any cases of administrative detention.

206. Members wished to know whether, in line with article 7 of the Convention, persons accused of torture abroad would be extradited and, if not, whether they would be tried in the Republic.

207. In connection with article 10 of the Convention, clarification was sought on whether medical personnel in prisons and police stations received training in the humane treatment of offenders.

208. Members requested information on several points under article 14 of the Convention: how many citizens had successfully claimed compensation for illegal acts by State or public bodies, and whether such compensation would also be available to non-citizens; the type of compensation provided to victims; whether medical rehabilitation would take place under the general health-care system or in specialized institutes; whether regulations regarding compensation had emanated from the Presidium of the Supreme Soviet or from the Council of Ministers; what other measures had been taken to rehabilitate persons who had suffered torture as a result of criminal behaviour by officials; and the results of the review, by the special commission of the Politburo of the Central Committee, on the rehabilitation of victims of repression during the personality cult.

209. In his response to the general questions raised by members of the Committee, the representative explained that, as Byelorussian legislation covered the concept of torture within the meaning of the Convention, it had not been deemed necessary to introduce a specific definition of torture in domestic legislation. He informed members that the revised decree of 1980 differed from the decree of 1968 in that all complaints against unlawful acts, such as torture, must be considered within one month or be referred to a higher authority; if the courts deemed such acts unlawful, measures were taken to make amends for their consequences. He explained

that, if decisions to initiate criminal proceedings were delayed or refused by public officials, such officials were liable to disciplinary measures, including dismissal; however, few cases of this kind had occurred. The Code of Criminal Procedure provided for the possibility of initiating proceedings against an official for negligence in considering a complaint if it had serious consequences which jeopardized the rights of a citizen; he added that there had not been such a case in the Republic. He further explained that challenges to the lawfulness of judgements could be lodged with the courts, although final decisions lay with the procurator. However, a new law on the subject would undoubtedly be enacted in the near future. On the question of providing the public with information on human rights instruments and the prohibition of torture, he indicated that that was ensured in the Republic by the dissemination of the relevant international instruments. The text of the Convention against Torture had been published in the press and would also appear, with other instruments, in a manual to be published shortly in both Byelorussian and Russian. In addition, the population was informed of international human rights standards through lectures or information campaigns. With reference to capital punishment, he stated that, although opinions on this issue varied among both members of the judiciary and the public at large, the prevailing view seemed to be in favour of maintaining the death penalty. The Supreme Court, under its right of legislative initiative, wanted a drastic reduction in the number of cases in which it was imposed and the question would no doubt be considered in future, although could it already be assumed that it would be maintained in legislation but imposed only in extreme cases.

210. With specific reference to questions raised under article 3 of the Convention, the representative explained that that article was strictly applied in practice, although there were no specific legislative provisions prohibiting extradition. There had been no case of a request from another State for the extradition of a Byelorussian citizen accused of torture. He added that article 36 of the Constitution indicated the persons to whom the right of asylum could be granted; these were essentially persons prosecuted in their own countries for progressive activities in the cause of peace, in particular members of national liberation movements. In no circumstances could they be persons who had committed acts contrary to the provisions of the Convention.

211. With regard to questions in connection with article 4 of the Convention, the representative stated that provisions defining unlawful acts and establishing penalties varied considerably from one Republic to another, and between the Republics and the Soviet Union, although all criminal codes prohibited recourse to unlawful procedures during investigations. He emphasized that articles 166 to 168 mentioned in the report were articles of the Byelorussian Criminal Code. As to whether domestic legislation excluded the possibility of recourse to torture, it had to be admitted that, in practice, the possibility did exist and that cases of torture sometimes occurred; the courts had recently convicted five militiamen and law-enforcement officials of having used interrogation methods leading accused persons to confess to acts they had not committed. He explained that the unlawful acts for which public officials might be punished were acts of violence, threats of acts of violence, or the use of weapons during investigation or detention. He added that the penalty for obtaining statements by force or coercion, under articles 166 to 168, 175 and 179 of the Criminal Code, was imprisonment from 3 to 10 years. He stated that the Supreme Court held that unlawful acts committed in the administration of justice must not be condoned. In illustration he said that, from 1988 to 1989, over 400 officials had received professional and administrative sanctions, extending to dismissal, and 22 members of the Procurator's Office and of the internal security agency had been convicted of unlawful acts.

212. In connection with article 5 of the Convention, he explained that under article 4 of the Criminal Code, anyone committing an offence in the territory of the Republic was subject to Byelorussian criminal law,and any Byelorussian citizen committing an offence abroad was laible under the Byelorussian Criminal Code.

213. With reference to questions raised in connection with article 6 of the Convention, the representative stated that persons suspected of crimes punishable by imprisonment for more than one year could be placed in pre-trial detention. The length of such detention was established under article 92 of the Code of Criminal Procedure and in principle must not exceed two months, but it could be extended by the procurators of the Republics and regions if the case was particularly complex or if new information came to light; that had happened in just over 1 per cent of cases. He stated that custody could not last more than three days and upon lack of evidence the person arrested must be released or, if evidence was furnished, he could be placed in pre-trial detention, released or placed under judicial supervision.

214. With regard to the implementation of article 7 of the Convention, the representative said that article 35 of the Constitution guaranteed to foreigners the rights and freedoms provided for by law, including the right to go to court; the provisions of the Code of Criminal Procedure were also fully applicable to foreigners.

215. In response to questions raised under article 10 of the Convention, the representative indicated that in 1988 a research and training centre had been established for the training, or retraining, of prison and medical personnel, where lectures were given by specialists in international law and medicine and by prominent members of judicial bodies. In addition, various higher educational institutes and military colleges provided practice-oriented tuition by specialists in international and criminal law.

216. With reference to questions raised under article 14 of the Convention, the representative informed the members that compensation was provided for under article 443 of the Civil Code, and that victims were fully compensated for prejudice suffered as a result of unlawful accusation, arrest, detention or treatment, regardless of the offence or relative guilt of the persons responsible. During the first six months of 1989, 117 cases of illegal arrest, trial or sentencing had been heard and compensation of approximately 38,000 roubles had been paid to the victims of such unlawful acts. He was unable to provide statistics for 1988 but did not believe that action had been brought for failure to make compensation in such cases. Compensation was paid in the form of a wage or allowance in order to restore all material rights to a victim, and all legal costs were reimbursed. In the event of the victim's death, the right to compensation passed to his heirs. He explained that the provisions for compensation had been incorporated in the Civil and Criminal Codes and the Code of Criminal Procedure following an order from the Supreme Soviet of the USSR in May 1981. With regard to the victims of repression, he stated that a special commission on rehabilitation had been set up under the Office of the Central Committee of the Communist Party to consider all cases of repression between the 1930s and 1950s. It was considering all the documents placed at its disposal to ascertain the names of all victims. During the first half of 1989, over 23,000 unlawfully convicted citizens had been judicially rehabilitated and the relevant details published in the media. The commission had held two further sessions, in September and October 1989, and would continue to do so until rehabilitation had been provided to all those unlawfully accused or arrested during the period of repression.

217. In concluding their consideration of the report, the members of the Committee thanked the delegation for its very detailed and precise replies to the many questions they had raised. They expressed the hope that the efforts made to punish unlawful acts that might be committed in the Republic would continue, and they wished every success to the Republic in its efforts to combat torture.

Canada

218. The Committee considered the initial report of Canada (CAT/C/5/Add.15) at its 32nd and 33rd meetings, held on 17 November 1989 (CAT/C/SR.32 and 33).

219. The report was introduced by the representative of the State party, who recalled that Canada had participated actively in the working group of the Commission on Human Rights, which had elaborated the Convention, and had made its unilateral declaration against torture in 1982. Canada was also a regular contributor to the United Nations Voluntary Fund for Victims of Torture and strongly supported the optional provisions contained in articles 20, 21 and 22 of the Convention.

220. The representative also referred to the review of domestic laws carried out by Canada at the federal, provincial and territorial levels to ensure full compliance with the terms of the Convention before ratifying it. A new offence of torture had been added to the Criminal Code applying to acts committed by officials. Exceptional circumstances were expressly excluded as a justification for torture. The infliction of purely mental pain or suffering was covered by the new offence of torture, and similar provisions existed in provincial instruments. Another amendment to the Criminal Code to ensure consistency with the Convention provided for universal jurisdiction in respect of acts of torture, and an amendment to Canadian law provided for the express prohibition of the use of evidence obtained as a result of torture.

221. With regard to preventive measures, the representative referred to guidelines, regulations and training courses to educate law enforcement personnel and others involved in the custody, interrogation or treatment of detainees concerning the prohibition of torture and similar acts. In order to educate the public at large, the Government of Canada had also prepared publications containing the report that it had submitted to the Committee and including information on the Convention and on the United Nations Voluntary Fund for Victims of Torture.

222. With regard to government assistance to torture victims, the representative referred in particular to various measures taken to help Mrs. Quintana, a Chilean national, who had been burnt in Chile during a general strike in July 1986, as well as to financial assistance granted to the Canadian Centre for Victims of Torture in Toronto which, together with the Vancouver Centre for Survivors of Torture, had developed several rehabilitation programmes. The Toronto and Vancouver centres had also been invited by the Minister of National Health and Welfare to submit a research proposal for a study on how torture affected the mental health of refugees and how effective treatment strategies could be developed. The terms of that proposal would be finalized in the near future.

223. In addition, the representative pointed out that his country's report was the result of close collaboration between the federal, provincial and territorial governments of Canada. The preparation of reports of Canada under human rights instruments was facilitated by an intergovernmental committee of officials on human rights.

224. The members of the Committee commended the Government of Canada on its comprehensive report and on the measures it had taken to adapt its domestic legislation to the Convention, to support rehabilitation programmes for torture victims and to publicize the text and the implementation procedure of the Convention. They also thanked the representative of Canada for his detailed oral presentation.

225. Questions of a general nature were raised with regard to the constitutional organization of Canada and the distribution of jurisdiction, powers and responsibilities between the federal government and the governments of the provinces and territories, particularly with regard to instituting criminal proceedings, granting compensation to victims of torture and the police and prison services. It was noted that, unlike the position in other provinces, the legislation already existing in Newfoundland prior to the Convention's entry into force for Canada was in compliance with the Convention, and it was asked whether the federal government's legislation was different from that of the provinces with regard to the implementation of the Convention or whether the measures taken by the provinces giving effect to the Convention simply complemented those taken by the federal government.

226. In connection with article 2 of the Convention, it was asked what were the functions of community observers placed in institutions following a serious incident involving violence against staff of the correctional service and what serious accidents had taken place involving violence.

227. With regard to article 3 of the Convention, the question was raised whether that article was directly applicable in Canada or whether it must be promulgated in national legislation in order to be applicable by the federal government and the provincial governments.

228. With regard to article 4 of the Convention, it was inquired whether the maximum penalty for perpetrators of acts of torture would include either the death penalty or life imprisonment. It was noted from the report that all employees of the Ministry of Correctional Services were prohibited from using force against an inmate except in specific limited circumstances, and it was asked what the legal consequences would be if a detainee died as a result of the application of such force.

229. In connection with article 5 of the Convention, it was inquired whether Canadians who had committed acts of torture abroad could be prosecuted in Canada.

230. In connection with articles 7 and 8 of the Convention, members of the Committee wished to know whether Canada applied the general principle of either extraditing a suspected offender or initiating criminal proceedings itself and whether, if Canada received a request for extradition from another State party with which it had no extradition treaty, it would consider the Convention as the legal basis for extradition in cases of torture.

231. In respect of article 9 of the Convention, it was observed that the information provided and the provisions mentioned in the report did not fully cover all aspects of the provisions contained in that article.

232. Turning to article 10 of the Convention, members of the Committee requested information on the training of medical officers, police officers and other persons

involved in the guarding and treatment of arrested persons. They also wished to know what employees were required to be informed of the prohibition of torture under the Correctional Institution Regulations, whether the term "employees" included all persons covered by article 10 of the Convention and how information was actually imparted. In addition, it was asked what were the duties of the Royal Canadian Mounted Police, who monitored the actions of its officers and whether any of them had been subject to disciplinary proceedings since the entry into force of the Convention for Canada.

233. Regarding article 11 of the Convention, it was observed that compliance with its provisions seemed to be differently interpreted in different provinces of Canada. Further information was also requested on the periodic reviews conducted by the Inspector-General with regard to compliance by institutions with the administrative policies and practices of the Correctional Service, as well as with the relevant regulations and legislation. It was asked, in particular, what was the maximum length of time a detainee could be remanded in custody during an investigation, who decided that a person should be detained and, if the period of custody was limited, who had the power to extend it, what was the meaning of "adequate and appropriate treatment" for persons being detained or under sentence, how control was exercised over the treatment of detainees and whether there was any difference in treatment between persons being detained and those already convicted.

234. With reference to article 13 of the Convention, members of the Committee wished to know what was the informal procedure for examining complaints, what was the legal status of the Public Complaints Commission and what were the exceptional circumstances in which the Commission could examine complaints before they had been studied by the police. They also inquired whether the detainee could freely choose the authority to which he addressed his complaints or whether there was some prescribed order of access, whether the Ombudsman was appointed independently by each province or whether appointments had to be approved by the federal government. Further details were requested about the circumstances in which the opening of mail addressed to the Ombudsman could be authorized.

235. In connection with article 14 of the Convention, clarification was sought about measures taken by Canada to ensure compensation for victims of torture. It was asked, in particular, whether the victim had any guarantee with regard to compensation in cases where the perpetrator of the act of violence was acquitted for lack of evidence, and whether social assistance as well as financial compensation could be provided by the State to a person whose rights or freedoms had been infringed.

236. Statistics were requested, in connection with article 16 of the Convention, concerning the number of State officials who had been prosecuted for committing or authorizing acts of cruel, inhuman or degrading treatment or punishment.

237. In reply to general questions put by members of the Committee, the representative of Canada explained the division of constitutional jurisdiction in Canada. He said that the federal government alone was competent to ratify an international instrument, but it was not competent to give effect in legislative terms to the provisions of that instrument. The federal government and the governments of the provinces and territories had to reach agreement on the necessary legislative and administrative measures to ensure the full and complete execution of the international obligations undertaken by Canada.

238. The representative explained that in Canada there was on the one hand the national police force which came under federal law, and on the other the provincial and municipal police, who were subject to provincial legislation. Similarly, there were federal prison establishments and provincial prison establishments. The Royal Canadian Mounted Police (RCMP), in particular, was governed by a federal statute, but as to actual police services, it complied with provincial directives. Because of the risk of overlap, there were consultation mechanisms at different levels in Canada: at the level of governments, the police administration, prison services and, above all, the federal and provincial officials and ministries responsible for human rights questions. In the event of conflict between a federal law and a provincial law, under the Constitution it was the federal law that prevailed. In respect of Newfoundland, in particular, the competent authorities had found that the terms of domestic laws gave effect to all the provisions of the Convention. A manual designed to clarify certain aspects of the division of constitutional jurisdiction in Canada was being prepared and would be sent to the various human rights committees.

239. With regard to questions raised in connection with article 2 of the Convention, the representative explained that a serious incident in a prison establishment was an incident that resulted in the serious injury or death of a member of the prison staff following acts of violence. In such a case, independent observers were placed in certain sectors of prison establishments in order to observe the working of the service in an impartial manner. In addition, the Federal Correctional Investigator performed the functions of Ombudsman, and was empowered to investigate complaints from prisoners in federal establishments.

240. With regard to article 3 of the Convention, the representative referred to a judgement handed down by the Supreme Court of Canada, in which the Court had stressed that the courts must always bear in mind the international obligations entered into by Canada and, in particular, in the case concerned, the provisions of article 3 of the Convention.

241. In connection with article 4 of the Convention, the representative said that the maximum penalty a person committing an act of torture could incur was 14 years' imprisonment. The death penalty had been abolished in Canada, although it was still provided for in the Code of Military Justice for particularly serious military offences committed in wartime.

242. With regard to article 5 of the Convention, he said that a Canadian citizen could be tried in Canada for acts of torture committed abroad.

243. In reply to questions raised on articles 7 and 8 of the Convention, he said that Canada effectively applied the principle aut dedere aut judicare for all offences covered by the Convention and other international instruments relating to offences of an international character.

244. On article 9 of the Convention, he said that Canada's practice in the field of mutual judicial assistance between States was fully consistent with the provisions of that article.

245. In relation to article 10 of the Convention, the representative stated that members of the RCMP were subject to the general criminal law of Canada and to their Code of Conduct. Every complaint made against a member of the RCMP would be treated in the same way as a complaint against any other Canadian citizen, but the practices of the RCMP could not be investigated by a provincial authority.

246. With regard to article 11 of the Convention, the representative provided information about the role of the Inspector-General, who was made specifically responsible by the Government for considering and evaluating in a systematic and independent manner all operations conducted within the framework of the Correctional Service at the departmental level. She also explained that the Penal Code stipulated that accused persons had to be brought before a judge within 24 hours of their arrest. The judge could order them to be kept in pre-trial detention, but the detention order must be reviewed after three months if the trial had not taken place. "Adequate and appropriate treatment" of detainees meant that the rules relating to respect for human dignity must be observed at all times. Supervision of the prison service was undertaken, inter alia, by the judicial system, which reviewed the decisions taken by prison officers and ordered compensation for prejudice suffered in the event of erroneous decisions. Persons awaiting trial and persons already convicted were not kept in the same prison establishment.

247. With regard to article 13 of the Convention, the representative said that the Public Complaints Commission was empowered to hear and examine complaints by individuals concerning the conduct of members of the RCMP. In its first annual report, that Commission stated that it had received 143 complaints. Its hearings would begin shortly and would be public. The representative also provided details of the procedure for examining complaints and explained that the "informal" procedure meant that the Commissioner of the RCMP tried to arrive at an amicable settlement between the complainant and the accused member of the RCMP. In exceptional circumstances, the Commission could investigate a complaint without the matter first being examined by the RCMP, i.e., if the investigation was in the public interest because the complaint raised a question of principle such as freedom of the press or freedom of expression. The representative explained that a person ill-treated by the police while in their custody could bring a civil suit for damages or even criminal proceedings against the police officer who had injured him. Moreover, the duties of the Ombudsman were defined by provincial legislation. At the federal level, several persons performed the duties traditionally assigned to the Ombudsman. Correspondence from a detainee to the Ombudsman or other authorities could only be opened for security reasons or in order to combat smuggling. A prisoner who considered himself aggrieved had the right to bring a complaint before an independent public official.

248. With regard to article 14 of the Convention, the representative pointed out that Canadian legislation, both federal and provincial, established a governmental system of financial compensation which also covered the cost of medical treatment and social assistance to victims of torture. That system did not exclude appeals to civil courts. Legislation also provided for the compensation of victims who suffered acts of violence or injuries.

249. The representative also said that a number of points, relating, in particular, to the implementation of articles 10 and 11 of the Convention, which had been the subject of questions by the Committee would be elaborated upon in Canada's next periodic report.

250. Concluding their examination of the report, the members of the Committee expressed their gratification at the measures taken by Canada, at both the federal and provincial levels, to give full effect to the provisions of the Convention. They also thanked the representatives of the State party for the clear and detailed replies given to the questions asked.

Cameroon

251. The Committee considered the initial report of Cameroon (CAT/C/5/Add.16) at its 34th and 35th meetings, held on 20 November 1989 (CAT/C/SR.34-35).

252. In his introduction, the representative of the State party informed the Committee that the report would be supplemented by an updated and more detailed document at a later stage. He then referred to the provisions of the Constitution of 1972 and other domestic legislation demonstrating Cameroon's commitment to respect for human rights. The Penal Code, in particular, prohibited cruel, inhuman or degrading behaviour which jeopardized the physical integrity, freedom and privacy of individuals or the security of children and the family. The Code of Criminal Procedure laid down the procedure to be followed to ensure the protection of a suspected person from the time of his arrest until his appearance before the competent magistrate.

253. Furthermore, Cameroon was a party to a number of international human rights instruments which did not require prior incorporation in domestic legislation in order to be applied by the authorities concerned. Accordingly, any person alleging violation of any provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment might invoke that provision before the competent courts to secure the condemnation of the perpetrator of the act in question and, if applicable, compensation for the injury suffered.

254. Foremost among the competent authorities on matters covered by the Convention were the judiciary and the judicial police. Public officials and agents failing in their duties were subject to disciplinary penalties. However, the effective implementation of legislative, administrative and judicial measures could encounter practical obstacles, owing to Cameroon's very difficult economic situation. The representative also recalled that, on independence, Cameroon had inherited two legal systems, the French system and the British system. Efforts had been made to unify the two systems and that had already been achieved with respect to the Penal Code, the Labour Code and organization of the courts.

255. The representative emphasized that Cameroonian penal legislation prohibited all acts of torture, attempts to commit such acts or participation in them. Acts of violence committed, in particular, by a public official in the exercise of his duties were punishable by imprisonment for six months to five years. The concept of violence was extended by article 285 of the Penal Code to other acts liable to constitute acts of torture, such as the administration of any harmful substance, neglect of a person incapable of looking after himself, and the withholding of food or care from a person legally or actually in custody of another. A whole range of provisions punished these and even more severe offences which came under the heading of torture.

256. The members of the Committee congratulated the Government of Cameroon on having subscribed without reservation to a number of international human rights instruments. They felt however that more information was necessary about the specific, practical application of the laws described in the report, particularly with respect to the prosecution of public officials for acts of torture. Statistics on the number of successful claims for compensation and information on prison conditions were also needed.

257. Furthermore, clarification and more information were requested about the legal framework in which the Convention was applied in Cameroon and, in particular, on the law which entitled any victim of a violation of the rights set forth in the Convention to invoke Cameroonian law before the competent courts, and on the mechanism for invoking it. In addition, members of the Committee wished to know who exercised powers over the judiciary similar to those which the President exercised over public officials, and whether military officers were also subject to the President's disciplinary powers and, if so, whether penalties had been imposed on military officers, and of what nature and on how many occasions, during the last five years. They also wished to receive information on how many times the death penalty had been imposed during the last five years and for what offences. It was also asked whether there had been any cases of slavery or trafficking in persons in Cameroon and, if so, how those responsible had been punished.

258. With regard to article 2 of the Convention, the question was raised whether a specific provision existed in Cameroonian law stating that an order from a superior officer or public authority could not be invoked in justification of torture.

259. More information was requested on how Cameroon implemented article 3 of the Convention and, in particular, on whether extradition was refused when there were substantial grounds for believing that the person in question would be in danger of being subjected to torture.

260. With regard to article 4 of the Convention, members of the Committee wished to know whether the Cameroonian Constitution and Cameroonian penal legislation specifically prohibited torture, since the provisions quoted in the report did not refer to torture by name, and whether the general principles of law upheld by Cameroonian courts provided specific guarantees against torture. They observed that it was not clear whether Cameroonian law embodied an adequate difinition of torture, including the concept of psychological and physical violence, and whether the penalties for such offences were commensurate with the penalties for other offences.

261. Members of the Committee further observed that it appeared from the information provided that the Government of Cameroon had not fully implemented article 5 of the Convention, and they requested information, in particular, on how universal jurisdiction over offences of torture was applied in Cameroon.

262. Moreover, members of the Committee expressed the view that the information provided did not give adequate and clear explanations on how Cameroon implemented articles 6, 7 and 8 of the Convention.

263. With regard to article 9 of the Convention, it was recalled that its provisions obliged all States parties to co-operate with one another in providing legal assistance to prosecute acts of torture. It was therefore observed that making such legal assistance subject to agreements that Cameroon had concluded with other countries, or to the authorization of the President of the Republic, was not in conformity with the provisions of the Convention.

264. Turning to article 10 of the Convention, members of the Committee expressed concern about the lack of training in Cameroon with regard to the prohibition of torture which should be given to law enforcement personnel and others involved in the custody, interrogation or treatment of detainees and prisoners. They asked, in that connection, how the Government intended to fulfil its commitment under the

Convention to provide prison officers and medical personnel with information on the prohibition of torture. They also requested detailed information on the legal training received by Cameroonian law enforcement personnel befor taking up their duties.

265. In connection with articles 11 and 12 of the Convention, members of the Committee made reference to a report of Amnesty International, dated May 1989, concerning conditions in Cameroonian prisons and asked whether the Cameroonian Government had seen that report, whether the Government had acknowledged any of the abuses alleged in the report and, if the allegations were true, how it intended to prevent such abuses from recurring. They asked also how the regulations governing the operation of prisons were enforced, whether any political detainees were being held incommunicado or without charge in Cameroonian prisons under so-called "administrative detention", on what law the authority of the police to hold a person in custody was based, what judicial controls were exercised over the actions of the police, what was the role of the judicial authority with regard to detention during the preliminary investigation, whether prison conditions conformed to the United Nations Standard Minimum Rules for the Treatment of Prisoners, what were the conditions and maximum length of solitary confinement, what was the suicide rate in Cameroonian prisons and what was the number of suicides attributable to cruel treatment.

266. In connection with article 13 of the Convention, clarification was requested on the procedures to which a torture victim could have recourse in Cameroon and on the role and statute of the Special Criminal Court.

267. With reference to article 14 of the Convention, information was requested on the responsibility of the State for providing compensation to torture victims. In addition, clarification was requested about the different procedures applicable for obtaining redress from senior and junior police officers and the relevant preliminary authorization to be given by the president of the court of appeal. It was also asked what recourse citizens had in the case of a claim against the president of the court of appeal himself or one of his officials.

268. With reference to article 15 of the Convention, clarification was requested about procedural legislation existing in Cameroon to implement that article and remedies designed to prevent extortion of evidence by a police officer. Details were also requested of any cases where truth drugs had been used on detainees.

269. Replying to questions raised by the members of the Committee, the representative of Cameroon stated that in his country powers of appointment and punishment of judges were vested in the President of the Republic. As far as other public officials were concerned, the Disciplinary Council advised on any penalties to be imposed but had no functions with regard to appointments. Members of the police and the armed forces who ill-treated or committed acts of violence against arrested persons were subject to disciplinary sanctions ordered by their commanding officer.

270. The representative then referred to offences such as murder or armed robbery, for which capital punishment could apply. He stressed that a person sentenced to capital punishment had the opportunity to exercise procedural remedies, including appeal and application for cassation, and could be pardoned by the Head of State. Capital punishment was applied only after all the remedies had been exhausted. In addition, he pointed out that the Penal Code of Cameroon punished persons guilty of

practising slavery and trafficking in persons with a penalty of imprisonment for 15 to 20 years if the victims were of age and 5 to 10 years if they were minors.

271. Referring to article 2 of the Convention, he stated that no express legal provision in Cameroon laid down that a person could not invoke an order from a superior to exonerate himself from responsibility for an act of torture.

272. With regard to article 3 of the Convention, he stressed that, in accordance with Cameroonian law, no foreign national could be compelled to return to any country, including his own. In no case had any person been extradited to a country if there was a well-founded fear of his being tortured there.

273. With regard to article 4 of the Convention, the representative stated that the principle of the primacy of the rules of international law and the provisions of international treaties over the provisions of internal law was set forth in article 2 of the Penal Code of Cameroon. There was no specific legislation concerning torture, because the provisions of the Convention formed part of the internal law of Cameroon. Moreover, several offences which could be deemed to constitute acts of torture or could be assimilated to such acts were punishable under Cameroonian criminal law.

274. With reference to articles 5, 6 and 7 of the Convention, he stated that Cameroonian courts were empowered to deal with all offences contravening the Convention, pursuant to articles 7 and 10 of the Penal Code.

275. In connection with article 10 of the Convention, the representative pointed out that training centres had been especially established in Cameroon for judges, police officers, gendarmes and prison guards. The training and education imparted played an important role in the prevention of torture.

276. In relation to articles 11 and 12 of the Convention and, in particular to the report of Amnesty International on conditions of detention in Cameroon, the representative stressed that his Government was not insensitive to the situation in the central prisons of Yaoundé and Douala. In the course of the past four years, efforts had been made to improve sanitary conditions and food rations in those institutions. The problem of prison overcrowding, however, had not yet been resolved. A number of senior officials of the Ministry of Justice and the Ministry of Territorial Administration, together with the competent public prosecutor, had recently visited the central prison of Yaoundé to evaluate the situation and had agreed on various measures intended to remedy the growth of the prison population. Those measures included the provisional release of persons held in preventive detention under certain conditions and the transfer to other prisons of persons sentenced to long terms of imprisonment. Political prisoners existed in Cameroon as a result of the unsuccessful attempt of a coup d'état in 1984, but they had been sentenced by competent courts. Police inspectors and judges were the only authorities empowered to arrest and detain a person under the control of the competent public prosecutor. The duration of custody was 24 hours, which could be extended three times on express authorization of the public prosecutor.

277. With regard to article 13 of the Convention, the representative provided some information on the remedies available to a torture victim, who could either institute criminal proceedings or introduce civil proceedings to obtain redress. He also explained that the special criminal court was called upon to try persons guilty of offences against publicly owned property or of misappropriation of public

funds. The court, however, had been abolished on the promulgation of the 1965 Penal Code, which had converted the offences assigned to it into ordinary offences within the purview of the High Court.

278. With reference to article 14 of the Convention, the representative stated that the victim of an act of torture committed by an official could claim redress from the State for the injury sustained. In this connection, he referred to an ordinance of 26 August 1972 specifying that the Supreme Court of Cameroon dealt with all administrative litigation against the State, public bodies or public institutions and that the ordinary courts dealt with all other lawsuits or litigation, even if public bodies were involved. In the matter of civil action available to a torture victim, which varied according to whether the torturer was a senior or junior police officer, the representative said that that procedure was rarely resorted to in practice, since victims preferred to initiate simpler procedures such as direct citation or filing of a claim for damages with the investigating judge to obtain redress.

279. The members of the Committee thanked the representative of Cameroon for the replies given. They felt, however, that there were still some points which needed clarification or additional information. Those points concerned, in particular, the independence of the judiciary, conformity of Cameroonian penal legislation with the provisions of the Convention, questions relating to extradition, penalties to be applied for the specific offence of torture, the principle of universal jurisdiction, the education of medical personnel and public officials on the prohibition of torture, conditions of detention, including solitary confinement, and measures taken by Cameroon for the implementation of articles 7, 9 and 15 of the Convention. The members of the Committee welcomed, therefore, the intention of the Cameroonian authorities to provide additional information in writing. They felt however that, in view of the large number of questions raised, it would be preferable and more rational for the Government of Cameroon to furnish a new additional report containing the information requested, as provided for in rule 67, of the rules of procedure of the Committee. In accordance with paragraph 2 of rule 67, the Committee indicated that the additional report of Cameroon should be submitted by 30 June 1990.

Hungary

280. The Committee considered the initial report of Hungary (CAT/C/5/Add.9) at its 34th and 35th meetings, held on 20 November 1989 (CAT/C/SR.34 and 35).

281. The report was introduced by the representative of the State party, who began by referring to the important steps towards democratization that Hungary had recently taken. She referred, in particular, to a law on amendments to the Constitution which had been enacted by the Hungarian Parliament in October 1989. Those constitutional amendments declared that Hungary accepted the generally recognized norms of international law and ensured conformity of domestic law with the international legal obligations entered into by the State. The new law proclaimed that the State's primary obligation was respect for and protection of inviolable and inalienable fundamental human rights. The representative stated that that law specifically prohibited torture, even during times of public emergency. The constitutional amendments also confirmed the principle of _habeas corpus_, the right to a fair and impartial trial, the presumption of innocence and the right of remedy. In addition, the amendments established the institutions of the Constitutional Court and the Parliamentary Ombudsman and

stipulated that foreigners lawfully in Hungarian territory could be expelled only on the basis of a lawful decision.

282. The representative further stated that that provision of the Penal Code relating to offences against the State had undergone a radical transformation and that Parliament had taken measures to humanize forms of punishment. In that effort, Parliament had declared that no one could be sentenced to death for political activities and had abolished "custody of increased severity". Furthermore, a detainee now had the opportunity to communicate freely with his defence attorney, orally and in writing, from the first moment of detention. Amendments to the Criminal Procedures Act of 1973 also permitted an attorney to be present and to ask questions at the interrogation of a suspect and witnesses. In addition, articles on questioning under duress had been supplemented by a new provision under which any statement unlawfully obtained could not be invoked as evidence.

283. In the matter of practical law enforcement, the representative referred to preventive measures taken by the Government which focused mainly on the training of the police and law enforcement officers with regard to national and international legal provisions relevant to their duties. She pointed out that prevention of abuse was also ensured through regular, systematic and frequent supervision by prosecutors and medical personnel in places of detention and in prison establishments, and that various measures were being taken to improve prison conditions and medical services for prisoners awaiting trial or under sentence.

284. With respect to punishment, the representative provided statistics for the period 1987 to 1989 regarding convictions, complaints of questioning under duress, and charges brought against offenders. She stated that, in three years, only one case of charges of torture had been brought against a law enforcement official. Court sentences against offenders also had an educational aspect and, under certain circumstances, consideration was given to the fact that the dismissal of a law enforcement offical, which could be ordered as a principal punishment, could cause grave problems to the offender and have an impact on the whole of the law enforcement corps.

285. Moreover, the representative stated that Hungary had to take further steps to improve the conditions of redress. The Government had to create stricter guarantees to channel complaints to the judicial authorities and to ensure that complaints were subjected to appropriate judicial inquiry. New legal provisions concerning such guarantees were being elaborated and they affected the Prosecutor's office and the courts. The creation of the Parliamentary Ombudsman also indicated that the relevant guarantees were being strengthened. In addition, changes in court practice aimed at strengthening guarantees of indemnification, especially for non-financial loss. In that area, Parliament had also decided to grant legal and moral compensation to victims of crimes committed during the 1950s.

286. The representative pointed out that, at the international level, Hungary had become party to several international human rights instruments and had accepted the competence of United Nations human rights treaty bodies with regard to communications received either from States parties or from individuals. In particular, Hungary had recently made the declarations provided for under articles 21 and 22 of the Convention and had withdrawn the reservations made upon ratification of that instrument. The withdrawal of all Hungary's reservations in relation to the jurisdiction of the International Court of Justice with respect to the international agreements to which it was a party was under way.

287. The members of the Committee welcomed the report and the comprehensive additional information provided by the representative of Hungary in her introduction, which members felt answered most of the questions left open by the report. Members wished to know, in general, by what legal mechanisms the provisions of the Convention were incorporated in domestic law. In that connection, they wished to know whether there was any contradiction between paragraph 3 of the report, which stated that treaties were not self-executing under Hungarian law, and paragraph 17 of the report, which stated that, if Hungarian jurisdiction in a concrete case could not be established under national law, it was established by the Convention. Members of the Committee also asked under what circumstances, if any, capital punishment might currently be imposed in Hungary, and whether there had been changes in recent years regarding the time at which an accused person had the right of access to a lawyer, and regarding the maximum term of imprisonment.

288. With reference to article 1 of the Convention, it was asked how torture was defined in Hungarian domestic law and how that definition differed from that in the Convention.

289. With regard to article 3 of the Convention, it was asked whether Hungarian law specifically prohibited expulsion, return or extradition to a country where the person concerned risked being tortured.

290. Turning to article 4 of the Convention, members of the Committee referred to paragraph 14 of the report, which stated that use of coercive methods to obtain a confession was an offence. Members wished to know what was the nature of that offence and whether the punishment imposed might include the death penalty. Members also requested information on the severity of penalties for torture. They requested, in particular, clarification of the relationship between articles 226 and 227 of the Hungarian Penal Code which, according to the report, set forth different penalties. In that connection, they also wished to know how penalties for torture compared with penalties for murder, grievous bodily harm and related offences, and what penalties existed under the Penal Code for different forms of torture.

291. Furthermore, members of the Committee requested clarification of the assertion in the report that articles 3 and 4 of the Hungarian Penal Code met the requirements of article 5 of the Convention in full, although Hungarian law did not follow them literally. They also wished to know whether or not Hungary had adopted universal criminal jurisdiction over persons alleged to have committed acts of torture, as required by article 5 of the Convention.

292. In respect of articles 6 and 7 of the Convention, it was inquired whether Hungarian practice was consistent with the provisions of both articles.

293. With respect to article 9 of the Convention, it was noted that the Hungarian report had focused on information concerning bilateral treaties of legal assistance between Hungary and a number of countries and it was observed that the Convention required "the greatest measure of assistance" among all States parties to the Convention. Clarification was therefore requested on the position of Hungary with regard to that provision.

294. With respect to article 10 of the Convention, members asked whether doctors involved in medical controls in Hungarian prisons received special education or whether such education had become a part of the regular medical curriculum in Hungary.

295. In connection with article 11 of the Convention, members of the Committee inquired into the inspection mechanisms available in places of detention and in prisons. They wished to know, in particular, who supervised the legality of prison operations, what legal guarantees applied to correspondence and visits to detainees and convicted prisoners, in what circumstances spcial measures, such as the use of weapons, were applied, what regulations governed such measures, whether solitary confinement still existed and, if so, for what period.

296. With regard to article 13 of the Convention, members of the Committee wished to know whether a convict's right to complain would apply to the preliminary phase of police investigation, the pre-trial phase, or the sentencing phase, and whether it was possible to file a wrongful detention complaint after dismissal of proceedings or acquittal.

297. With regard to article 14 of the Convention, members of the Committee asked whether medical treatment, as well as moral and monetary compensation, were provided to victims of torture and, in particular, whether such aid was available to persons who had been victims of torture before the Convention came into force for Hungary. Clarification was also asked of the statement in the report to the effect that responsibility for damage caused within the scope of administrative authority could be established only if the damage could not be averted by ordinary means of legal remedy or if the person injured had exhausted all such means. In addition, it was asked whether it should be concluded from article 348 (1) of the Hungarian Civil Code that the State was responsible for the acts of civil servants and magistrates in cases of violation of the Convention, and whether the State or the public officials who had committed the wrongful act might be held responsible for redress. Finally, it was asked how many victims of torture during the 1950s there still were in Hungary and by what methods their complaints would be received.

298. With respect to article 15 of the Convention, it was asked whether evidence obtained under torture was void or whether it had any legal value.

299. In response to the Committee's general questions, the representative of Hungary began by explaining that international instruments which set forth rights and obligations for individuals and legal entities were incorporated in domestic legislation through the promulgation of laws, legislative decrees, decress of the Council of Ministers or ministerial decrees. The Convention against Torture had been incorporated in domestic legislation by legislative decree in 1988. Internal legislation had to conform with the provisions of the international instruments ratified by Hungary, and acts deemed to be acts of torture within the meaning of the definition contained in the Convention were enumerated in chapter XII of the Hungarian Penal Code.

300. The representative further indicated that, under the Penal Code, capital punishment was applicable in time of war for collaboration with the enemy, violence against civilians, violations of the laws and customs of war and genocide. In time of peace, the death penalty was applicable to certain premeditated homicides and particularly odious crimes. However, the number of executions had been steadily decreasing in recent years. With respect to terms of incarceration, the representative stated that the maximum sentence of imprisonment in Hungary was 25 years. In accordance with the new provisions adopted in October 1989, the maximum duration in police custody could not exceed 72 hours, and provisional detention could not exceed five days. Provisional detention could be extended up to two months only if it was authorized by a court order. Detention for longer

periods required authorization by the Supreme Court. The suspect's family had to be informed of the detention within 24 hours. A suspect also had the right to have a lawyer present before making any declaration. The lawyer was entitled to attend all interrogations.

301. With reference to article 1 of the Convention, the representative pointed out that, since the Convention had been incorporated in internal law, the definition of torture contained therein was the one applied by the Hungarian legal system.

302. With regard to article 3 of the Convention, the representative stated that the Minister of Justice had been responsible for deciding on matters of extradition and that, in taking his decisions, he was bound by the provisions of the Convention. Expulsion could also be ordered on the basis of either a judicial decision or a decision by the police authorities; however, this second possibility was under review and in the future aliens could not be expelled from Hungary except by a court order that would take the Convention into consideration. She also indicated that Hungary was party to bilateral agreements on expulsion which conflicted with the relevant provisions of the Convention, but that these agreements were being reviewed in order to adapt them to Hungary's international commitments. Furthermore, with regard to extradition for terrorist acts, the representative stated that, in cases where suspected terrorists might be subject to torture in another State, an exception would be made to the rule that might normally justify expulsion to that State.

303. In response to questions regarding article 4 of the Convention, the representative said that questioning under duress could bring a penalty of five years, as could illegal detention or arrest when accompanied by torture. Perpetrators of acts of torture could incur the death penalty if they had committed homicide. Regarding gaol terms for perpetrators of acts of torture, they varied from 5 to 25 years' imprisonment; in the case of bodily injury, the penalty was one year's imprisonment if the victim's previous state of health could be restored within eight days. With regard to abuse of authority, the maximum penalty was three years, and for physical abuse, a maximum of two years.

304. In reply to the Committee's questions regarding article 5 of the Convention, the representative confirmed that Hungary had established its jurisdiction when the offence of torture was committed on Hungarian territory, when the alleged offender was a Hungarian national and when the victim was a Hungarian national, in which case Hungary could request the other State to extradite the offender. The representative further stated that Hungary could institute proceedings against a national of another State who had committed an act of torture either on the basis of the Convention or on that of its own national legislation.

305. Regarding the question whether Hungary's practice conformed to the provisions of articles 6 and 7 of the Convention, the representative stated that a national of another State suspected of having committed an offence specified in the Convention was subject to the same treatment and procedures as a Hungarian national.

306. In connection with article 9 of the Convention, the representative stated that Hungary had concluded agreements on mutual judicial assistance with the same countries with which it had signed extradition treaties. Where a mutual judicial assistance treaty existed, article 9, paragraph 2, applied. In the absence of a treaty, Hungary acted on the basis of the Convention.

307. With regard to article 10 of the Convention, the representative stated that some 60 per cent to 70 per cent of doctors working in detention centres and prisons were specially trained for their tasks.

308. In response to questions regarding article 11 of the Convention, the representative said that regular inspections of detention centres to guarantee the application of the laws and of conditions of detention were carried out by competent authorities of the police. In prisons, inspections were carried out by the prison directors. The public prosecutor also inspected detention centres weekly and prisons monthly, as well as upon request. The representative stated that prisoners underwent medical examination upon admission to detention centres and prisons as well as upon transfer and release. Such checks were administered daily in provisional detention centres, weekly in prisons, and otherwise upon request. Medical examinations were also administered regularly on detainees in solitary confinement or subjected to measures of constraint. The maximum term allowed in solitary confinement was 10 days in a provisional detention centre, 20 days in a prison and 30 days in a penitentiary. Depending on the results of medical examinations, solitary confinement could be temporarily interrupted. Measures of constraint currently existed. Those measures were determined by ministerial decree and were not applicable to minors, the physically handicapped, pregnant women and the gravely ill. There were three pre-conditions for their application, namely, warning, proportionality and legality of application, the last of which was controlled by the public prosecutor and the doctors. The use of weapons was subject to the same conditions. Application of measures of constraint would be more clearly defined by a new law to be promulgated in 1990. With regard to the right to correspondence and visits, a suspect in detention was free to communicate with members of his family throughout the period of provisional or preventive detention.

309. On the subject of the right to complain under article 13 of the Convention, the representative informed the Committee that applications for compensation could be filed at any moment, whether the victims were suspects or convicted persons. Complaints of torture were submitted to the director of the prison, to the prosecutor in charge of supervising the application of penalties and, in the last resort, to the Parliamentary Ombudsman. The constitutional amendment ensuring the independence of the prosecutor and of the court also guaranteed an impartial investigation of any complaint of torture. In the event of any complaint of ill-treatment or torture, an incarcerated victim would be transferred to another place of detention. Both prosecutors and prison officials had the duty to inform a suspect of his or her right to lodge a complaint. In addition, there were signs posted in the prison informing inmates of this right; and inmates were allowed to complain of any ill-treatment, even that suffered by another prisoner.

310. In response to questions regarding article 14 of the Convention, the representative stated that rehabilitation in the form of free medical treatment was available both in prison, where doctors with specialized skills were in attendance, and in other hospitals. She also stated that a victim had the right to apply for compensation regardless of his position as a suspect or convicted person, and the prosecutor had the duty so to inform the victim. The representative said that currently civil proceedings had to be instituted to obtain redress, but that as of 1990 administrative redress would also be available. Where a crime of torture had been committed, liability attached to the perpetrator, but if the perpetrator was a public official, the State, as employer, was liable for compensation or reparation. The representative then referred in detail to recent measures taken to provide

compensation for persons victims of torture and other crimes or injustices during the 1950s. The total number of victims was estimated at about 1 million. Measures for compensation were still partial; nevertheless, Hungary was contemplating giving compensation to all persons affected by the crimes committed in the 1950s.

311. With regard to article 15 of the Convention, the representative stated that confessions under duress could not be invoked as evidence except in the prosecution of a person accused of torture. The representative specified that the term "duress" meant any means used against an accused or convicted person, such as stopping of correspondence or visits, to extract a confession.

312. The members of the Committee expressed satisfaction that gaps in the initial report of Hungary were adequately filled in by the representative's additional information and replies. The Committee was of the view that Hungary was already meeting the requirements of the Convention both in law and in practice. However, the process of democratization and humanization of judicial procedures was still under way and further improvement could be expected in the future, also with regard to the application of the Convention.

Colombia

313. The Committee considered the initial report of Colombia (CAT/C/7/Add.1) at its 36th and 37th meetings, held on 21 November 1989 (CAT/C/SR.36-37).

314. In his introduction, the representative of the State party referred to provisions of the Colombian Constitution concerning the protection of the life, honour and property of all persons living in Colombia, as well as the liability of public officials in cases of violation of the Constitution and the laws. He pointed out that the crime of torture was dealt with in article 279 of the Colombian Penal Code.

315. He also stated that the Public Prosecutor's Department, through the Office of the Attorney-General of the nation, exercised overall supervision over public officials in the performance of their duties, could impose disciplinary sanctions on them, and was empowered to bring legal proceedings when grounds existed therefor. By decision No. 030 of 15 August 1986, the Attorney-General had entrusted the Second Office for the National Police with the task of ensuring the observance and protection of human rights, including the right not to be tortured or subjected to degrading treatment.

316. Furthermore, instructions and circulars of the Ministry of Defence, the Police Directorate-General, and the Army Intelligence and Control Command regulated the conduct of officials and guaranteed respect for the rights of individuals. Violation of those rules gave rise to judicial proceedings against the State. On two recent occasions, in 1985 and 1988, the Council of State, the supreme administrative tribunal of Colombia, had declared the nation guilty of conduct contrary to the duties of the police with regard to the right of prisoners to be treated in accordance with the obligations imposed by law, and ordered it to provide redress for the injuries caused and to indemnify the families of the victims.

317. The representative then referred to legal measures providing for control to be exercised by the judiciary in Colombia to prevent and punish abuses by public officials during a public emergency or a state of siege. He pointed out that the

principle by virtue of which an order from a superior officer could not be invoked in justification for torture, was incorporated as a comprehensive rule, for all offences, in article 21 of the Colombian Constitution. Exception was made for acts committed by members of the armed forces in the course of their duties, liability for which would rest solely with the superior officer who gave the order. The new Military Code, promulgated in 1988, for the first time included torture among punishable acts by members of the armed forces on active duty, when the unlawful act was related to duty, without prejudice to any penalties that might be imposed on the basis of other provisions in force. Moreover, articles 13 and 15 of the Penal Code regulated the application of the principles of territoriality and extraterritoriality for any type of serious offence, including torture. Other provisions of the Penal Code ensured compliance with articles 6, 7 and 8 of the Convention.

318. The representative emphasized that the task of promoting due respect for human rights, in the midst of a political and social situation characterized by a high level of violence, had been the constant preoccupation of the Colombian authorities. In this connection, the Presidential Advisory Council for the Defence, Protection and Promotion of Human Rights had been established in November 1987, and the armed forces had been revising their disciplinary regulations with the aim of strengthening guarantees for individuals.

319. The members of the Committee thanked the Government of Colombia for its detailed and well structured report and its representative for his oral introduction. They noted that Colombia was going through a difficult period and had long been encountering a situation of violence leading to social disorder. Despite that situation and notwithstanding its economic difficulties, Colombia was developing measures to promote democracy and human rights. In that connection, members of the Committee wished to receive more information on the general principles underlying the political structure of the country and the organization of the executive, the legislature and the judiciary. Information was requested in particular on the legal status and composition of the Advisory Council referred to in the report.

320. Reference was made to information provided by non-governmental organizations such as Amnesty International according to which, in the period since Colombia had ratified the Convention, some 2,500 persons had been killed in the country, 250 had disappeared and doctors had participted in torture. Acts of violence against trade unionists and human rights activists had also been reported by the International Association against Torture. In order to understand the broad geopolitical problem facing the Colombian Government, it was asked to what extent the civil authorities had the capacity to govern throughout the country and to control the conduct of their police and military personnel, and what practical difficulties the Government was facing in preventing paramilitary forces from conducting clandestine executions and obstructing the course of justice. It was observed that there seemed to be a gap between the law and its enforcement in Colombia, and it was asked whether there were any legal provisions in force that did not comply with the Convention and what was the machinery employed to enforce the provisions of the Convention.

321. In respect of article 1 of the Convention, members of the Committee wished to receive further details about the definition of torture in the Colombian Penal Code and to know in what way, if any, it differed from the definition in the Convention.

322. With regard to article 2 of the Convention, an explanation was requested on political liability in respect of which charges could be brought against public officials, and on how enforcement through Congress operated. It was asked, in that connection, what penalty an official would incur if he was held to be liable. It was also asked what the machinery was for lodging a direct action for compensation against the Colombian State, what was the definition of a state of economic emergency, which ministers exercised political control over the declaration of a state of emergency and whether the exercise of political and constitutional control, followed by an opinion from the Council of State, was sufficient to authorize such a declaration. Furthermore, it was noted from the report that liability for acts committed in the course of their duties by members of the armed forces rested solely with the superior officer who gave the order, and it was inquired what the position was when such an order was blatantly illegal and whether the subordinate had no right to disobey. It was also noted from the report that a punishable act was justified in compliance with a lawful order given by a competent authority in due form of law, and it was asked what was the exact meaning of "lawful order" in that case, in what particular circumstances such an act would be justified, and how an unlawful order could be given in due form of law. It was observed that the general provision that such an order justified the commission of an otherwise punishable act seemed to be at variance with the provision in the new Military Penal Code of Colombia that any person who inflicted physical or mental torture on another was liable to imprisonment. It was further observed that the fact that the Colombian Penal Code did not apply to serving military personnel acting under orders could not be reconciled with the categorical provision in article 2, paragraph 3, of the Convention.

323. Questions were raised by members of the Committee in respect of extradition under articles 3 and 8 of the Convention. It was noted from the report that, traditionally, the position of Colombia had been to refuse the extradition of Colombian nationals. It appeared also that extradition was not granted in the absence of specific treaty arrangements, and it was asked whether Colombia, in the absence of bilateral or multilateral agreements, would extradite a Colombian torturer or refuse to expel a foreigner who might thereby be subjected to torture. Furthermore, it was stated in the report that, in order to grant or offer extradition, the Government required the approval of the Supreme Court of Justice, and it was asked whether, in a case where such approval was not forthcoming, the Government could turn to the President of the Republic. In addition, information was requested on the number of persons extradited by Colombia to other States during the past two years.

324. With regard to article 4 of the Convention, clarification was requested about the classifications of the offence of torture and the penalties applicable for such an offence in the Colombian Penal Code and in the new Military Penal Code.

325. In connection with article 5 of the Convention, it was observed that Colombia did not seem to exert universal jurisdiction over torturers, and it was recalled that such jurisdiction was an obligation under the Convention.

326. With regard to article 7 of the Convention, members of the Committee wished to know whether there was a specific provision in Colombian legislation to the effect that a person alleged to have committed an act of torture should be either extradited or tried. They also asked how many officials had been prosecuted for torture and acts of cruel, inhuman or degrading treatment or punishment in Colombia, what was the total amount of compensation which had been paid by Colombia

to torture victims, who appointed the defence lawyer during the preliminary inquiry, at what moment the lawyer intervened in the proceedings, and whether there had been prosecutions of military personnel, as distinct from members of the civil police, pursuant to the new Military Penal Code.

327. With reference to article 9 of the Convention, it was observed that the fact that Colombia was a party to the Inter-American Convention on Proof of and Information on Foreign Law did not seem to ensure full compliance with the obligation to afford the greatest measure of assistance in connection with criminal proceedings to all States parties to the Convention.

328. With regard to article 10 of the Convention, it was recalled that States parties were obliged to provide training in particular for medical personnel, and especially for doctors, about the prohibition against torture, and it was asked if that was being done in Colombia, and at what level.

329. As for article 14 of the Convention, further information was requested about moral, monetary and medical assistance to torture victims. It was asked, in particular, whether anything was being done for the medical rehabilitation of victims who might suffer for a long time after being tortured.

330. With regard to article 15 of the Convention, members of the Committee observed that it was not clear from the report how its provisions were implemented in Colombia, and specific information was requested on any provisions which cancelled the validity of confessions under torture and on any case law on the subject.

331. In his reply, the representative of Colombia gave a description of the political system and institutions of his country. He pointed out that Colombia was a democracy, which guaranteed the independence of the executive, the legislature and the judiciary. Two methods of monitoring the constitutionality of laws existed in Colombia: on the one hand, any citizen might request the Supreme Court of Justice to rule on the constitutionality of a law and, on the other hand, judges had the power to rule on the constitutionality of a law when applying it in a specific case.

332. The state of siege or emergency was expressly provided for in article 121 of the Constitution; any decrees issued by the executive under the extraordinary powers conferred upon it by that régime must be submitted to the Supreme Court, which was required to rule on their constitutionality in the days following their promulgation. The representative recalled that Colombia had experienced a series of civil wars and periods of institutional stability; those factors had to be taken into account in order to grasp the process of political evolution in Colombian society. He also stressed that, by the beginning of the twentieth century, Colombia had already acquired most of the institutions which formed the basis of its political system, and its legislation had been codified. That explained to some extent the need that was now becoming apparent to adjust that legislation, which was already old, to the developments of international life in order to avoid discrepancies between internal legislation and international standards.

333. In addition, the representative provided information on the national rehabilitation plan, launched by the Colombian Government in 1986, which provided for economic and social assistance to areas hit particularly hard by violence. He also stated that the provisions of international treaties prevailed over those of national laws. In order to be integrated in national legislation, a treaty had to

be approved by Congress, then sanctioned by the executive and signed by the President of the Republic. He pointed out that the report submitted by his Government to the Committee did not mention specific instances of violations of human rights, since specific information on the subject had been sent to various United Nations bodies dealing with complaints about such violations.

334. With regard to article 1 of the Convention, the representative specified that the Colombian Penal Code did not contain a definition of torture. There was a school of thought in the country that was against the law defining concepts because it feared that a definition might reduce its scope and restrict the work of jurisprudence and the role of the judges. What was important was to agree on a number of legal criteria for the application by the judiciary of general principles to individual cases.

335. In connection with article 2 of the Convention, the representative explained that the principle of political liability, which was prescribed by the Constitution, concerned only senior State officials who, when they committed offences in the performance of their duties, might be judged only by the Congress of the Republic. The sanction concerned their official status, but it did not rule out the possibility that the Congress might refer the matter to the competent court, leaving it to the judges to assess whether the offence committed required ordinary proceedings to be instituted. He then explained the new concept of a state of economic emergency that had been included in the Constitution when its text had been amended in 1988. Under article 122 of the Constitution, the executive was allowed to take steps that were normally the prerogative of the Congress of the Republic in particularly troubled situations, such as a sharp fall in tax revenue or rate of exchange. Measures taken under that system were subordinated to the control of the Council of State and the Supreme Court and did not affect the civil rights and guarantees affirmed in the Constitution.

336. With regard to the relieving of liability of a subordinate who had committed an unlawful act on the order of a superior, the representative pointed out that the relevant provision of the Penal Code, which affected primarily members of the armed forces and the police, constituted an exception of a general nature which required, when the case arose, a careful study of the nature of the order from the superior and the nature of the punishable acts. The Penal Code merely stated a principle, without establishing clear-cut distinctions. In Colombia, the judges interpreted the law, and in that particular case they had endeavoured to define the term "legitimate order" by establishing a difference between the intrinsic nature of the activities of a subordinate subject to a superior, i.e., his normal duties, and the behavioural aspects which went completely beyond the limits of his normal duties. If the order concerned acts such as torture or inhuman or degrading treatment, which did not come within the scope of the official's duties, the principle of total immunity for the subordinate would not apply. The question remained of the extent to which a subordinate could take advantage of the exception prescribed by law and justify unlawful conduct by invoking an alleged order from a superior to carry out acts unrelated to his functions. Again, the issue was one that depended on the interpretation given by judges, who would have to base themselves on legislation that was neither very clear nor very direct.

337. Turning to articles 3 and 8 of the Convention, the representative explained the procedure relating to extradition which existed in his country and pointed out that a distinction had to be made between the system of normal or usual extradition, regulated by the law, and cases of extradition arising in exceptional circumstances,

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under the state of siege which had been proclaimed in order to be able to meet the difficulties caused by the activities to combat drug trafficking. When Colombia received an application for the extradition of a foreign national who had been charged in another country, the Government was required to request the opinion of the Supreme Court of Justice concerning the extradition. Should that opinion be unfavourable, the executive could not grant extradition; should it be favourable, the executive had the power to comply or not to comply with it. When the application for extradition concerned Colombian nationals, exceptions were envisaged in accordance with international law, under the principle whereby, in the legislative hierarchy of the country, international treaties had higher status than national legislation. With regard to the number of extraditions recently granted by Colombia, the representative stated that six or eight persons charged with infringing the legislation on drug trafficking had been extradited to the United States of America in accordance with the exceptional procedure established under the state of siege.

338. In connection with article 4 of the Convention, the representative referred to provisions relating specifically to torture which were contained in articles 217, 270 and 279 of the Penal Code.

339. With reference to article 10 of the Convention, he stated that the presidential adviser for the promotion of human rights had been very active with regard to the training and education in human rights questions of various sectors, particularly the armed forces. In connection with article 15 of the Convention, the representative stated that in Colombia it was for the judges to assess the value of confessions in accordance with the principles regulating evidence, which were not defined by law but by doctrine and jurisprudence. However, the Colombian Code of Penal Procedure stipulated that, in order to be valid, testimony must be free and spontaneous. Confessions obtained by force, therefore, did not satisfy the criteria for admissibility of evidence provided by testimony.

340. In their concluding remarks, the members of the Committee expressed the view that, on the whole, Colombia's legal institutions seemed sufficient to guarantee human rights and to prevent and punish acts of torture. However, Colombian legislation still needed to be improved, reviewed and adapted to specific provisions of the Convention in a number of areas which concerned mainly the following: the question of obedience by military personnel to the orders of a superior; extradition of persons who might be in danger of torture in their countries; appropriate penalties to be applied to the offence of torture; effective application of universal jurisdiction; procedures concerning mutual assistance in legal matters to be provided to all States parties to the Convention; education and training on the prohibition against torture to be addressed, in particular, to medical personnel; and measures to guarantee that evidence in proceedings was not obtained as a result of torture. Finally, the Committee expressed the wish to receive from the Colombian authorities an additional report, pursuant to rule 67, paragraph 2, of the Committee's rules of procedure, containing the statistics and information requested during the consideration of the report, in particular with regard to the number of persons extradited during the past two years, the number of military personnel committed for trial, and the form and amount of compensation paid to victims of torture.

Chile

341. The Committee considered the initial report of Chile (CAT/C/7/Add.2) at its 40th and 41st meetings, on 23 November 1989 (CAT/C/SR.40 and 41).

342. The report was introduced by the representative of the State party, who pointed out that Chile was in the final stages of a complex and difficult process of democratization. The first landmark in the democratization process had been the adoption of the Constitution. The second had been the plebiscite of October 1988, in which the people had decided that the President should be chosen by direct and competitive elections, which were due to take place on 14 December 1989. The third landmark had been the referendum of 31 July 1989, which had helped to bring about a consensus between the Government, its supporters and the opposition on constitutional changes designed to limit the powers of the executive in periods of constitutional emergency.

343. The representative also stated that his Government was determined to remedy the mistakes that had been made in the field of human rights. He added that, despite the many problems it faced, his Government had never ceased to co-operate with international human rights bodies on condition that Chile should be considered under established procedures and not as a special case. He regretted that the General Assembly and the Commission on Human Rights had not yet accepted that condition.

344. Members of the Committee expressed the view that the report was instructive and thorough concerning the legislative and regulatory provisions that had been adopted in Chile for the prevention and prohibition of torture. However, it remained to be ascertained whether the Chilean Government had the will and the capacity to enforce that legislation. They pointed out that they had received reliable information from a number of non-governmental organizations which indicated that torture had continued even after Chile's ratification of the Convention in September 1988, and that further information would be necessary on how individuals could be protected in practice from acts of torture perpetrated by public officials.

345. In that connection, members of the Committee wished to know what was the legal mechanism by means of which the Convention was incorporated in Chilean legislation, how many police or military officers had been prosecuted for torture-related offences in the past five years, how many had been found guilty and what penalties they had received, how many applications had been made under the procedures of amparo and protection during the past five years, how many of those applications had been accepted, what was the role that the executive played in the appointment of judges, and how judges could be disciplined or dismissed.

346. Furthermore, it was noted from the report that in Chile there was a time-limit of 15 days for lodging an application with the court of appeal in whose jurisdiction the act or arbitrary or unlawful omission causing the injury had allegedly been committed or occurred, and it was asked to what body a person could apply after 15 days had elapsed.

347. In connection with article 1 of the Convention, reference was made to the reservation of Chile according to which the Chilean Government would apply the Inter-American Convention to Prevent and Punish Torture in cases where there was incompatibility between the provisions of that instrument and the United Nations Convention against Torture. It was observed that, under article 1, paragraph 2, of the Convention, a State could give preference to another international instrument only when that instrument contained provisions of wider application, and that the reservation of Chile therefore did not appear admissible.

348. With reference to article 2 of the Convention, members of the Committee referred to the Advisory Commission set up by the Chilean Ministry of the Interior, which dealt, inter alia, with guarantees for the treatment of prisoners, and asked whether the Commission also had jurisdiction over military detainees, how many complaints of violations of fundamental rights had been received by the Commission, whether complainants and witnesses were protected against ill-treatment or intimidation as a consequence of complaints or evidence given, and to what body the Commission was answerable. Clarification was also requested on the terms and conditions of incommunicado detention.

349. Members of the Committee referred also to the reservation made by Chile to article 2, paragraph 3, of the Convention, in so far as that provision modified the principle of "considered obedience" established in Chilean domestic legislation. It appeared from that reservation that a superior officer would be the only person accountable for acts of torture whenever his order manifestly leading to perpetration of such acts was confirmed by him in response to a query by a subordinate, and it was asked how many superior officers had been prosecuted in recent years, and how many subordinates for that matter. It was observed that the principle of "considered obedience" in Chilean law seemed to be designed to protect individuals and especially mambers of the armed forces from the consequences of their actions, and not to protect society. Clarification was therefore requested on this principle and on the relevant legal provisions, which appeared to be incompatible with the Convention.

350. Furthermore, members of the Committee noted that Chile had also expressed a reservation in respect of article 3 of the Convention because of the "discretionary and subjective" manner in which it was drafted, and they wished to know exactly what the Government had meant by that remark and whether it intended not to apply article 3 at all or to apply it only in a limited way.

351. With regard to article 4 of the Convention, it was observed that the penalties established by the Chilean Penal Code for torture involving mutilation or bodily injuries seemed to be adequate; however, it was not clear whether that was so in the case of acute suffering that did not entail bodily injuries, mutilation or inability to work, or whether the infliction of acute mental suffering was expressly prohibited under the Penal Code. It was observed also that the Code of Military Justice, while it established penalties for members of the armed services who used violence against persons under arrest or detention in order to obtain information from them, did not mention penalties for using violence for other reasons, such as punishment.

352. In connection with articles 5 and 7 of the Convention, it was asked whether Chile could confirm that it had established its jurisdiction over all the offences mentioned in the Convention except those covered in the articles from which Chile had expressly derogated. It was asked, in particular, whether a foreign national who was alleged to have committed acts of torture in another State and had been arrested in Chile would be prosecuted by the Chilean authorities if, for some reason, he could not be extradited. Information was also requested on legal provisions which, in addition to the Bustamante Code referred to in the report, could ensure full compliance by Chile with article 5, paragraph 2, of the Convention.

353. Similarly, in connection with article 9 of the Convention, it was asked whether the necessary legal basis existed in Chile to give the greatest measure of

assistance in respect of criminal proceedings to all States parties to the Convention and not only to those bound by the Bustamante Code.

354. With regard to article 10 of the Convention, information was requested on what was being done in Chile to educate law enforcement personnel and doctors about the prohibition against torture and to make public opinion aware of the provisions of the Convention.

355. With reference to article 11 of the Convention, members of the Committee welcomed the co-operation of the Chilean Government with the International Committee of the Red Cross (ICRC) in the improvement of prison conditions, and they asked for more information in that respect, as well as on the regulations governing conditions of detention. They also wished to know whether a systematic review of places of detention by magistrates existed in Chile and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were accepted and incorporated in Chilean legislation.

356. With regard to article 12 of the Convention, members of the Committee referred to reported allegations of cases of torture and asked whether offenders had always been properly prosecuted, whether it was true that all secret files of the National Inforamtion Agency were about to be destroyed, what disciplinary measurs could be taken or criminal charges brought against officials guilty of ill-treating detainees, and whether statistics existed on the number of such officials.

357. Turning to article 14 of the Convention, members of the Committee wished to know whether in Chile the State was legally as well as morally responsible for acts of violence committed by public officials against its own citizens, and whether it was the offender or the State that had to provide compensation to the victim. They also asked how many persons had been convicted under article 410 of the Penal Code establishing compensation to be provided by the offender to the victim, how many persons had been compensated in accordance with that article, whether the last part of that article meant that a torture victim who had enough money would not receive compensation, apart from medical expenses, even if he was disabled as a result of the torture and whether a victim could obtain compensation for moral injury or mental disturbance resulting from torture.

358. With reference to article 15 of the Convention, members of the Committee noted from the report that only a confession made before a judge was admissible as evidence in Chile and that such a confession must comply with all legal formalities. In that connection, they asked whether the same was true of cases tried by military courts, whether the examining magistrate was present in such cases, whether any evidence obtained under coercion could be accepted by the courts, what was the mechanism by means of which evidence was obtained, what was the length of pre-trial detention, what was the procedure followed from the time of arrest of a suspect, throughout preliminary inquiries and investigations to sentencing, and what guarantees were available to persons suspected, charged and sentenced. It was also noted that Police Department officers were forbidden to engage in acts of violence intended to obtain statements from a detainee, and it was asked whether military officers were subject to the same regulations and whether persons detained by the military were immediately brought before a judge, in the same way as those detained by the police.

359. In his reply, the representative of Chile referred to a series of complementary measures taken by his Government to reinforce and make effective the

application of legal provisions for the prohibition and punishment of unlawful acts. Those measures included the ratification and incorporation in domestic legislation of several international human rights instruments, the Government's co-operation with the Special Rapporteur of the Commission on Human Rights, who had made six visits to Chile, the establishment of the Advisory Commission under the Ministry of the Interior following a recommendation by the Special Rapporteur, and co-operation with the ICRC in respect of conditions in detention places. The representative also provided details of the Chilean legal framework and referred, in particular to article 19 of the Constitution of Chile, which dealt with the constitutional safeguards applicable to all inhabitants of Chile, and to the provisions of article 150 of the Penal Code, dealing with penalties applicable to acts of torture. He pointed out that, in two recent cases, a police official and a security officer who had been tried and convicted of acts of torture which had caused death had been sentenced to capital punishment, which had been carried out in both cases. As for the results of proceedings instituted against those who had perpetrated the offences covered by the Convention, he informed the Committee that, out of the 130 trials held, there had been a final decision in 32 of them, including 4 death sentences; 80 cases were still pending and in 18 the accused had been discharged.

360. The representative then described the process of incorporation of international instruments in Chilean domestic law. By that process, those instruments acquired the same status as national laws and had priority over ordinary legislation. An amendment to article 45 of the Constitution of 30 July 1989 made it obligatory for the organs of the State to respect and promote rights guaranteed by the Constitution and by international instruments ratified by Chile. The Convention against Torture therefore had constitutional status and could be directly invoked before the courts. Moreover, Chilean law made provision for a whole series of judicial remedies. In the case of some of them, their exercise had been restricted or suspended during states of emergency, but the powers conferred upon the executive during states of emergency and all remedies without exception were now freely available. The representative also provided information on the structure of the judiciary and the composition of the courts in Chile. The highest judicial body was the Supreme Court; its members were chosen by the executive from among the judges of the courts of appeal.

361. The military courts formed an integral part of the general judicial system and were subject to the jurisdiction of the Supreme Court in the same manner as civil courts. The jurisdiction of the military courts had been broadened because the number of offences punishable under the Code of Military Justice had increased in accordance with certain laws. The increased workload of the military courts had detracted from their effectiveness, thereby giving rise to a grave problem. In general, judges were responsible for the acts performed by them in the exercise of their functions, and those who failed in their duties were therefore liable to punishment.

362. The representative pointed out that the time-limit of 15 days had been set for the application of the remedy of protection, a procedure which had a summary character; however, on expiry of that time-limit, the applicant could have recourse to other remedies, such as amparo.

363. In connection with article 1 of the Convention and the reservation made by Chile concerning its application of the Inter-American Convention to Prevent and Punish Torture, the representative explained that it had been agreed among the

American States that, in case of incompatibility, the rules embodied in regional instruments prevailed over those of international instruments. Nevertheless, since the provisions of the Inter-American Convention and those of the United Nations Convention were essentially identical, the reservation formulated by the Government of Chile was purely theoretical.

364. With regard to all the reservations formulated by Chile to the Convention, the representative pointed out that they had been lodged by the Chilean Government partly for reasons of substance, partly for procedural reasons, and partly also because the present Government of Chile was about to be replaced by another government to which it wished to leave the entire responsibility of deciding whether it agreed to be bound by all the provisions of the Convention and thus to withdraw the reservations.

365. Referring to article 2 of the Convention, the representative stated that the Advisory Commission of the Ministry of the Interior consisted of independent persons chosen for their special knowledge or abilities, who made recommendations to the Ministry, to which the Commission was answerable. The Commission could also propose measures of assistance to possible victims. Its reports could be made available to the Committee. The representative further explained the terms of incommunicado detention which could be ordered by the examining magistrate for a period not exceeding five days, or 10 days for certain grave offences such as terrorist acts. In order to avoid abuse, the examining judge could order further incommunicado detention only with the consent of the court of appeal. A law would soon be promulgated which would specify that a prisoner in incommunicado detention could at all times be visited by doctors or representatives of the ICRC.

366. With regard to questions raised in connection with the reservation of Chile to article 2, paragraph 3, of the Convention, the representative explained the difference between "duty of obedience", meaning that a subordinate who obeyed an order from a superior was always exonerated from criminal responsibility, and "considered obedience", established in Chilean law, meaning that a subordinate who received an order manifestly leading to the perpetration of an offence had both the right and the duty to query that order. If the superior confirmed the order, the subordinate had to carry it out, but he could no longer be held responsible. With regard to torture, it was an offence for which there was always a person responsible, and that was why the Chilean Government had formulated a reservation, in order to reconcile the principle of exoneration of responsibility established in its domestic legislation with the obligations arising from the Convention.

367. With regard to the reservation of Chile to article 3 of the Convention, the representative stated that, in the view of his Government, no State was entitled to pass judgement on the internal situation of another country and to assume that a person who had been the subject of an order of expulsion, refoulement or extradition ran the risk of being tortured. However, the Chilean Government had formulated only a formal reservation and had never declared that it would not apply in substance the provisions of article 3 of the Convention.

368. Turning to article 4 of the Convention, the representative explained that the basic penalty laid down in article 150 of the Penal Code was supplemented by a penalty whose gravity was proportional to the effects of the act committed. Thus, if the offence resulted in serious bodily injury, the penalty specified in article 150 of the Penal Code had to be supplemented by another penalty corresponding to the type of injury caused, in accordance with the principle of non-concurrence of penalties.

369. With regard to articles 5 and 7 of the Convention, the representative referred to the relevant provisions of the Convention on Private International Law known as the Bustamante Code to which Chile was a party, and stated that, in case of incompatibility between the provisions of the Convention against Torture concerning extradition or prosecution of a person alleged to have committed acts of torture and the provisions of the Bustamante Code, Chile had opted for applying the provisions of the Code, which constituted an obligation contracted earlier.

370. In respect of article 10 of the Convention, the representative stated that all the international and national legal provisions concerning human rights, as well as the question of torture, received wide publicity in his country. They were brought to the attention, in particular, of law enforcement officials.

371. With reference to article 11 of the Convention, the representative provided detailed information on the activities carried out in Chile by ICRC to protect detainees and improve their conditions of detention. Appropriate proceedings had been instituted on the basis of reported ill-treatment. However, the number of such allegations was decreasing and concerned only isolated cases. Visits to detainees by the ICRC applied to prisoners tried and sentenced by military courts and to prisoners held incommunicado under certain conditions. In addition, the representative referred briefly to disciplinary punishments within the prison system which were subject to the control of the competent court. Physical punishment was forbidden. Provisional release during the proceedings could be granted to an accused person except in the case of certain types of offence. A system of semi-liberty had also been recently introduced. The Ministry of Justice supervised conditions of detention with the assistance of the Directorate-General of the Prison Service. Periodic inspections were organized by the Ministry of Justice, the Supreme Court, the Court of Appeal and the ICRC.

372. In connection with article 12 of the Convention, the representative referred to the co-operation of his Government with the Special Rapporteur of the Commission on Human Rights in respect of allegations of torture in Chile. He stated that he would transmit to his Government any information available to the Committee concerning concrete facts and he would ask his Government to investigate those cases. Furthermore, a law providing for the dissolution of the National Information Agency would be promulgated shortly. The Agency's archives would not be destroyed, but would be handed over to the competent authority. Part of the archives, in particular those relating to national defence, would remain confidential.

373. With regard to article 14 of the Convention, the representative referred to article 19 of the Chilean Constitution providing for reparation to be granted by the State to any person who had suffered material or moral injury from erroneous or arbitrary trial or sentence. Compensation was assessed by a judicial decision. In repect of coercion or torture, the responsibility of the State and the direct responsibility of the perpetrator of the act were involved. Two types of action emerged from such an offence: a criminal action to punish the perpetrator and a civil action to obtain reparation of the injury suffered, which could be either material or moral. In addition to monetary compensation, the victim would be entitled to assistance for rehabilitation, including medical assistance.

374. With regard to article 15 of the Convention, the representative pointed out that confessions obtained by coercion had no value as evidence and that the legal rules governing the question of proof and the weighing of evidence were the same for the civil and military courts.

375. In concluding the consideration of the report, the members of the Committee thanked the Government of Chile for the dialogue that had just taken place and expressed the hope that it would continue, if possible, in the coming year. They also welcomed the co-operation established between the Chilean authorities and the ICRC as well as the statement to the effect that the reservations formulated by Chile could be reconsidered at a later stage. They pointed out, however, that the situation in Chile was not yet satisfactory, since cases of torture continued to occur. In that connection, they wished to draw the attention of the Chilean Government in particular to allegations of torture in Chile reported to the Committee by non-governmental organizations, such as Amnesty International and the World Organization against Torture. Furthermore pursuant to rule 67, paragraph 2, of its rules of procedure, the Committee wished to obtain an additional report from the Chilean authorities containing, inter alia, complete data and statistics on recent cases of persons subjected to torture, on the proceedings initiated against the perpetrators and on compensation granted to victims. In addition, the members of the Committee expressed concern at the fact that the military courts were finding it difficult to deal with all the cases referred to them, and they observed that the situation with regard to information and training of Chilean public officials in the matter of prevention of torture was still unsatisfactory. Finally, the Committee welcomed the offer of the Chilean representative to provide them with some of the reports prepared by the Advisory Commission on the Ministry of the Interior.

Senegal

376. The Committee examined the initial report of Senegal (CAT/C/5/Add.19) at its 44th and 45th meetings, held on 24 April 1990 (CAT/C/SR.44 and 45).

377. The report was introduced by the representative of the State party, who referred to the active role his country had played in the drafting of the Convention and said that a group of Senegalese lawyers was involved in the preparation of a draft African convention for the prevention of torture, which was intended to supplement the protection machinery set up under the African Charter on Human and Peoples' Rights.

378. Highlighting different parts of the report, the representative said that, under article 79 of the Constitution, the provisions of the Convention had been incorporated into Senegalese domestic law and could as a result be directly cited before the courts and administrative authorities. Although the Criminal Code made no specific mention of torture, its constituent elements were nevertheless taken into account under the generic term "assault and battery". In addition, violations of the physical integrity of human beings were severely punished.

379. Since the risk of torture and ill-treatment was greatest during periods of custody, an act dated 27 February 1985 had considerably reorganized the system of custody. For example, it could not exceed 48 hours except where an extension was granted on the written authorization of the State Prosecutor, and the grounds were to be communicated to the person concerned, who, moreover, had the option of being examined by a doctor at his or her request or that of his or her counsel or any other person. The representative added that articles 56 et seq. of the Code of Criminal Procedure, which dealt with those matters, were properly applied in practice, as could be seen from a decision taken by the Indictments Division of the Dakar Court of Appeal on 25 January 1990, annulling a preliminary investigation procedure because of complaints of brutality during custody. Pointing out that

there was also a risk of torture or ill-treatment in places of imprisonment, the representative referred to various provisions of a 1966 decree concerning conditions of imprisonment which, in particular, prohibited prison staff from using violence against prisoners, insulting them or using rude language in speaking to them, and made provision for medical supervision of the state of health of all prisoners.

380. Lastly, the representative added that, while it was permissible for restrictions to be placed on the exercise of some public freedoms in certain exceptional circumstances, such as the introduction of a state of emergency or a state of siege in cases of public danger threatening the existence of the nation, the exceptional powers thus granted to the security forces did not allow them in any circumstances to torture individuals or inflict cruel, inhuman or degrading treatment upon them.

381. The members of the Committee commended the Government of Senegal on its comprehensive and informative report and emphasized that the exhaustive information it contained and the oral introduction that had been provided gave a clearer picture of the context in which the Convention was applied in Senegal.

382. With reference to the legal framework for the application of the Convention in Senegal, the members sought further information concerning the direct application of the provisions of the Convention in Senegal, bearing particularly in mind the clause in the Constitution providing that international treaties were directly applicable subject to their implementation by the other party. They wished to know what was the age of majority in criminal matters; in how many cases individuals had been prosecuted for offences against State security; and in what way the supervision of the president of the departmental court by the State Prosecutor could be reconciled with the principle of the separation of powers. Clarification was also requested on factors and difficulties that might affect the application of the Convention and on the practical application of its provisions.

383. With reference to article 16 of the Criminal Code, which provided that a woman sentenced to death who declared that she was pregnant could not suffer the penalty until after giving birth, it was pointed out that such a provision could be likened to cruel, inhuman and degrading treatment and that the time had perhaps come to abolish the provision once and for all. More generally, since no death sentence had been carried out for 20 years, it was asked whether that implied that the most serious offences had been decriminalized and whether, since it appeared that the corresponding legislative provision had fallen into disuse, there were plans to abrogate it.

384. Concerning article 1 of the Convention, members of the Committee asked whether the Criminal Code prohibited not only acts of violence, but also the threat of such acts.

385. Concerning article 2 of the Convention, supplementary information was requested concerning legal guarantees of the protection of fundamental rights when crisis situations led the authorities to take exceptional measures. Clarification was also sought concerning the real significance of paragraph 141 of the report, bearing in mind article 315 of the Criminal Code, under which there was no crime or offence when murder or bodily assault had been prescribed by law and ordered by the lawful authorities. In that regard, it was asked whether such a provision could be used to justify corporal punishment.

386. Concerning article 4 of the Convention, the members of the Committee wished to know whether articles 334 and 337 of Senegal's Criminal Code, punishing illegal arrests and abductions committed by individuals, also applied to acts committed by public officials.

387. Concerning article 10 of the Convention, the members commended the efforts made by Senegal to provide training courses on human rights for staff of the police and the prison administration, and wished to know whether there were plans to extend such training to medical and nursing staff and to military personnel. It was also asked whether the implementation of the planned reforms of the National Judicial Training School had begun.

388. The members of the Committee sought additional information on the implementation of article 11 of the Convention. Concerning conditions of custody in particular, clarification was requested on the concrete application of article 55 of the Code of Criminal Procedure, under which persons who might be able to give information of use for an investigation or persons whose identity needed to be established could be placed in custody. It was also asked whether persons placed in custody were held in premises specially designated for that purpose; whether they could be held in solitary confinement; whether the medical examination they had a right to request could be carried out by a doctor of their choice; whether the grounds for the detention in custody were notified to the person concerned orally or in writing; and at what time an accused person had the right to the assistance of a lawyer. Clarification was also sought on the type of supervision to which criminal investigation officers were subject; the number of prison establishments in Senegal; and the treatment of persons in detention, particularly those awaiting trial. In that regard, it was asked for what reasons foreigners accounted for more than 12 per cent of the prison population; whether prisons were overcrowded; whether there were political prisoners in Senegal and, if so, in what kind of establishments they were held.

389. Concerning article 12 of the Convention, the members asked how many public servants and other officials had been prosecuted for illegal acts of torture or detention, and whether examples could be provided of prosecutions of such persons. Citing an Amnesty International report referring to allegations of acts of torture carried out by members of the security services against persons suspected of belonging to a Casamance separatist movement, the members pointed out that article 12 of the Convention placed an obligation on States parties to undertake an impartial investigation wherever there was reasonable ground to believe that an act of torture had been committed, and asked what the Government's position was in that regard. They also asked whether, aside from the often very lengthy judicial procedure, an administrative procedure existed for the examination of such allegations.

390. Concerning article 13 of the Convention, information was sought on the number of complaints lodged concerning acts of torture, the procedure followed after the lodging of such complaints, and whether such offences were tried in specific courts.

391. Clarification was also requested concerning the realization of the right of victims to compensation, and the principle that evidence obtained by force could not be used in legal proceedings, in accordance with articles 14 and 15 of the Convention.

392. Lastly, regarding article 16 of the Convention, the members asked for information on the application of the punishment of hard labour for life laid down in article 7 of the Senegalese Criminal Code.

393. In reply to general questions raised by members of the Committee, the representative of the State party explained that article 69 of the Senegalese Constitution, which referred to the incorporation of international instruments into Senegalese domestic law, mainly concerned bilateral agreements. Furthermore, since Senegal had ratified the Convention against Torture without reservations it should therefore have no difficulty in incorporating the relevant provisions into its domestic law. Replying to other questions, he stated that special legislation applied to minors between the ages of 13 and 18 and that children below the age of 13 could not be placed in detention in any circumstances. He also agreed that the system according to which the President of the departmental court could perform the functions of a Deputy State Prosecutor violated the separation of powers of the Ministry of Justice and the Department of Public Prosecutions. The arrangement was, however, merely a transitional one accounted for by the shortage of qualified magistrates and was in the process of being rectified.

394. Turning to questions raised in connection with the death penalty, the representative emphasized that no such sentence had been imposed in his country for 20 years; that no woman (pregnant or otherwise) had ever been executed in Senegal; and that capital punishment could therefore be said to have been abolished de facto. Furthermore, the President of Senegal had solemnly declared that the death penalty would not be imposed during the rest of his term of office. The fact that a pregnant woman sentenced to death could not be executed until her child had been born was not a cruel punishment because, in actual practice, the death penalty was no longer applied.

395. In connection with article 1 of the Convention, the representative stated that the Penal Code was being revised and that the new version would contain a specific reference to torture as defined by the Convention.

396. In response to questions raised by members in connection with article 2 of the Convention, the representative emphasized that the safeguards surrounding any suspension or restriction of constitutional rights were strict and adequate. He added that article 315 of the Penal Code could only be invoked if the order was itself legal. Consequently, any officer who carried out an order to commit an act of torture, which by definition was illegal, would be criminally responsible and liable to disciplinary measures.

397. With reference to questions raised by members concerning article 4 of the Convention, the representative pointed out that, by virtue of the principle of equality before the law, the same provisions applied to public officials, including the police and gendarmerie, as to private individuals.

398. With reference to questions asked in connection with article 10 of the Convention, the representative agreed that human rights instruction for doctors and army personnel might be incorporated in the draft legislation being prepared on that subject and stated that he would transmit the recommendation to his Government.

399. With regard to questions raised in connection with article 11 of the Convention, the representative stated that Senegalese legislation carefully defined cases in which a custody order could be issued. In that regard he emphasized that

persons detained in custody were not held incommunicado, but were kept in sections of police stations set aside for that purpose; that they could receive visits and were given medical attention; that they had to be informed of the reasons for the custody order; and that medical examination to verify allegations of torture were impartial. In *flagrante delicto* cases there was a requirement that the case be tried as soon as possible, that the accused be informed of his right to counsel and that he should have three days to prepare his defence. There was, however, no provision for access to a lawyer during the preliminary inquiry, access being granted once charges had been made. Responding to other questions he pointed out that as foreigners constituted an estimated 15 to 20 per cent of the entire Senegalese population, the figure of 12 per cent of the prison population was not excessive; that detention in custody could not, in principle, exceed six months; that detainees' rights to visits and correspondence were protected by law; and that one method which had been adopted to reduce the problem of prison overcrowding was the granting of presidential pardons and amnesties on the National Day and at the New Year. Although there were no political prisoners in the legal sense of the term, special detention centres existed for persons accused of crimes of a political nature and in other establishments there were special premises where such persons enjoyed more favourable treatment than ordinary detainees.

400. With reference to questions raised in connection with article 12 of the Convention, the representative drew the Committee's attention to the fact that there were very few specific cases in which allegations of torture by the police had been found to be true but, when they had, the persons responsible had been punished to the full extent of the law. He further stated that the allegations in the Amnesty International report that torture had been used in Casamance concerned a number of separatists who had attacked the police and that some separatists had died in the attack. Those who had been arrested had been properly brought to trial and had received fair trials. Furthermore, the delegation of the International Committee of the Red Cross in Dakar had been given constant access to the persons arrested and sentenced. He added that like any democracy, Senegal required that political demands should be made legally through political parties. He also explained that the Government Attorney was responsible for monitoring custody orders; that State prosecutors were instructed to make visits without notice to gendarmerie brigade headquarters to check the conditions in which persons were being held in custody.

401. With regard to article 13 of the Convention, the representative explained that most prosecutions for acts of torture were undertaken on the initiative of the Department of Public Prosecution, that torture cases were tried by ordinary judges in ordinary courts and that, to his knowledge, no cases of torture had ever been brought before the State Security Court.

402. In connection with articles 14 and 15 of the Convention, the representative stated that in some circumstances rehabilitation was a right and that in others, a request had to be made to the court in which the prosecution was being held. He added that although the law might not specifically set out which means of obtaining evidence was prohibited, Senegalese courts applied certain general principles with the result that evidence obtained by means of torture would be held inadmissible. In a case of torture, rehabilitation would be as of right.

403. Finally, with reference to article 16 of the Convention, the representative said that persons detained pending trial were not required to work and that prison law provided that there should be just remuneration for any work done. Hard labour

was an outdated penalty and Senegal planned to replace it by incarceration. In the interim, prisoners sentenced to such a penalty served their sentences in the same establishments and under the same conditions as those sentenced to incarceration alone.

404. In concluding the consideration of the report, the members of the Committee once again congratulated the representative of Senegal on his oral introduction and replies to the questions asked. They, however, expressed concern with respect to some provisions in current Senegalese legislation, especially regarding the death penalty, and requested the Senegalese Government to provide an additional report, pursuant to rule 67, paragraph 2, of the rules of procedure, responding to questions raised on the number of cases of public officials sentenced for torture, on the way the plans for training and information were being carried out and to the request for statistics on prison establishments.

405. The representative assured the Committee that his country would do everything possible to execute the provisions of the Convention, which it had ratified without reservation. It would continue to follow with interest the Committee's efforts to eradicate the odious crime of torture, and would provide the additional information requested by the Committee.

Tunisia

406. The Committee considered the initial report of Tunisia (CAT/C/7/Add.3) at its 46th and 47th meetings, held on 25 April 1990 (CAT/C/SR.46 and 47).

407. The report was introduced by the representatives of the State party, who emphasized that since 7 December 1987 a series of reforms and a set of measures had been adopted in Tunisia that had made it possible to assure political stability, to consolidate democracy and to strengthen civil and political rights. In that context, the ratification by Tunisia, on 23 September 1988, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without any reservation being entered on articles 20, 21 and 22 was a logical sequel to its earlier commitments and confirmation of its attachment to universal values.

408. After describing the legal order of Tunisia, the representative said that Tunisian positive law abounded in legislation that punished torture in all its forms and that the machinery for safeguarding human rights established in Tunisia guaranteed the full and complete application of the Convention against Torture. He referred to the measures taken to ensure the scrupulous implementation of the new legislation and especially the Convention against Torture, including: the regulation of police custody and pre-trial detention; the elimination of the State Security Court; the abolition of forced labour; the amnesty of prisoners convicted for offences committed on political or trade union grounds before 7 November 1987; and the authorization granted for Amnesty International to open a section in Tunisia. He drew the attention of the Committee to the fact that at the present time there was not a single political prisoner in gaol and that since 7 November 1987 no person sentenced to death had been executed.

409. In conclusion, the representative of the State party said that clearly a great deal of work still needed to be done in order to ensure that everyone fully enjoyed the rights conferred on him in the best possible material conditions and that at present the concern of the Government and the Tunisian law-maker, convinced of the

essential role of the law in effecting the transition from words to deeds, was to consolidate the rights of the individual and individual freedoms by new legal instruments.

410. The members of the Committee welcomed with satisfaction the report of Tunisia and the representative's statement, which had rounded off the information contained in the report. They commented that the information provided showed that the changes that had come about in Tunisia in 1987 had strengthened human rights in that country and had produced reforms that were directed along the lines of the provisions of the Convention against Torture.

411. At the same time, clarifications were requested on certain points and especially on the character and the legal significance of the "National Agreement"; on the competence and legal status of the Tunisian Human Rights League and on the principle of dual jurisdiction adopted in Tunisia. Referring to the implementation of the Convention in Tunisia, members of the Committee inquired about the legal criteria on which the classification of legal standards was established, according to which the conventions ratified by Tunisia occupied an intermediate position between the Constitution and the ordinary laws; what was the practice for the application of provisions of the Convention by the appropriate courts and particularly in the event of conflict between its provisions and existing legal standards; whether the publication of the Convention in the *Journal Officiel* was sufficient to ensure its dissemination adequately within the country. Members also wished to know how the legislative measures enacted by the Tunisian Government had been applied in view of the brief period of time that had elapsed since the change that had occurred in 7 November 1987 and whether the Government had come up against obstacles or opposition in that regard.

412. With regard to article 1 of the Convention, members requested additional information on the death penalty, which was still in existence in Tunisia, and in particular on the cases in which that penalty could be carried out; whether it was actually pronounced; on how and under what conditions it was carried out; and on how many cases the death penalty had been pronounced. They also wished to know whether individuals had been sentenced to corporal punishment and whether, in certain circumstances, prisoners could be held incommunicado and, if that were the case, on what grounds and for how long.

413. In connection with article 2 of the Convention, members asked whether persons arrested were treated in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners; what were the conditions of detention prior to November 1987 and what were the measures that had led to an appreciable and rapid improvement in these conditions in the years 1988 to 1990. Clarifications were requested on the régime of detention in "semi-open" prisons; on the number of prisons and the number of prisoners in Tunisia. They also inquired whether there was a problem of overcrowding in the prisons in Tunisia, as occurred in many other countries; the conditions under which solitary confinement as a disciplinary measure was effected, whether there were remedies against that measure, and whether it was subject to supervision; the conditions, procedural and financial, for carrying out a medical examination requested by persons held in police custody; the conditions of detention for female prisoners with children up to the age of three; the distinction drawn between "re-educational work" and "forced labour".

414. In connection with the application of article 4 of the Convention, members of the Committee asked for clarifications on the provisions of the Penal Code dealing

with misuse of authority by public officials and inquired as to when these new provisions had been incorporated into the Penal Code.

415. with reference to article 5 of the Convention, members of the Committee, noting that the application of paragraph 1 of that article did not appear to give rise to any difficulty in Tunisia, commented that the report did not state clearly whether the provisions of paragraph 2 were also directly applicable and asked for additional information.

416. In connection with the application of article 7 of the Convention, members commented, with reference to paragraph 114 of the report, that the definition of torture contained therein was more restrictive than the definition appearing in article 1 of the Convention, since torture might leave no visible lesions and cause only mental trauma, and they inquired how that question was regulated by Tunisian law. They also asked how many complaints had been made in such cases.

417. Concerning the application of article 10 of the Convention, members of the Committee wished to know whether the training programme for police and prison personnel included instruction relating to torture and ill-treatment; whether similar instruction was provided for doctors, army personnel and security forces. They also asked whether courses on human rights were provided in university teaching programmes in general and in law faculties in particular. Noting with interest that in hospitals, forensic services were provided by specialized medical personnel who carry out medical examinations of the corpses of victims of violence or torture, they asked whether their existence did not mean that torture continued to be practised, and how many cases of torture had been reported or noted after the reforms introduced in 1987.

418. With regard to the application of article 11 of the Convention, members of the Committee, noting that under Act No. 87-70 of 26 November 1987, amending the Code of Criminal Procedure, police custody of a suspect could not exceed four days unless the Public Prosecutor decided to extend it, asked about the treatment to which the person being held during these four days was subjected and, in particular, whether he could be held incommunicado. They also inquired about the respective number of prisoners serving sentences or awaiting trial held in Tunisian prisons.

419. With reference to article 12, members of the Committee asked whether security officials or members of the national guard had recently been the subject of investigations, prosecutions or convictions and, if that were the case, for the Committee to be provided with relevant statistical data.

420. In connection with article 14 of the Convention, members of the Committee asked for details about the physical and psychological rehabilitation of victims of torture and of the opportunities existing for victims of torture to obtain compensation and to avail themselves, in certain cases, of legal aid.

421. With regard to the application of article 15 of the Convention, members of the Committee asked, with reference to paragraph 157 of the report, whether it would not be better in this case to apply directly the provisions of article 15 of the Convention, which did not call for intervention by a judge.

422. The representative of the State party, in response to the general questions raised by the members, declared that the questions put in connection with the

consideration of the initial report of Tunisia had been pertinent in that they drew attention to the work which still had to be done in order to improve Tunisian legislation. He clarified the relationship between the Tunisian Constitution, international conventions and Tunisian internal law, stating that duly ratified international agreements had legal standing higher than internal laws. He said that difficulties occasionally arose in applying certain provisions of international conventions, in particular, in connection with drafting the necessary decrees and regulations and putting them into force. However, he pointed out that, in general, Tunisia had experienced no major difficulties in applying international conventions, and that no changes in its Constitution had been required. The representative provided the Committee with detailed information on the legal status and the value of the "National Agreement", as well as on the status and competence of the Tunisian Human Rights League.

423. The representative of the State party described in detail the procedures for dealing with human rights violations and, more specifically, for implementing the Convention against Torture, and gave explanations on the conflicts that existed between the Penal Code, the Code of Criminal Procedure and international conventions. As for the principle of two jurisdictions established in Tunisian judicial law, he said that the principle was more philosophical than legal in tenor; as in many other countries, the system of justice had been so organized that it guaranteed people's rights and promoted the interests of sound justice.

424. Turning to the questions raised in connection with specific articles of the Convention, the representative stated that the Penal Code promulgated in July 1913 did not fully correspond to the provisions contained in article 1 of the Convention. He pointed out that the concept of torture had been certainly subsumed within the meaning of the term "unlawful infringement". However, express mention of torture would be made in the relevant provisions of the Penal Code when it was revised. In that connection, he informed the Committee that between September 1988 and April 1990 there had been 16 cases of violence and/or "unlawful infringement".

425. As for the application of the death penalty, he stated that the Penal Code provided that the death penalty should be carried out by hanging; but, he underlined, during the past two and a half years there had been no executions in Tunisia, and the Head of State had exercised his constitutional right to commute the death sentence to a sentence of life imprisonment. On the question of the execution of pregnant women, he said that a pregnant woman could not be executed until after she had given birth; that the authorities had no intention of allowing indirect torture and there had always been a degree of indulgence for humanitarian reasons towards women who gave birth in prison.

426. With reference to the questions related to the conditions of detention in prisons, the representative said that new prison regulations had been promulgated in a decree of 7 November 1988, and as a result of various amnesties some 11,000 prisoners had been released. A number of prison doctors, psychologists, psychiatrists and wardens had been recruited, but the major development brought about by the decree had been the creation of a new relationship between prisoners and the prison administration, as prisoners' rights had been enshrined in law. As of 20 April 1990, there had been some 9,300 prisoners out of a total population of approximately 7 million. The overall prison area was 20,420 square metres, an average of 2.19 square metres per prisoner. That area did not include space used for kitchens, exercise yards, workshops, etc. He emphasized that Tunisian legislation provided for solitary confinement only as a disciplinary measure for

misconduct within a prison and gave detailed information on the modalities in the application of that punishment. As for the right of persons in custody to a medical examination, he stated that the detainee himself, his immediate relatives or his spouse could make the request for medical examination; the Public Prosecutor, under the Code of Criminal Procedure, could also order a medical examination. In theory, the State would pay for the medical examination if the person did not have the means at the time he was placed under a custody order, but in practice the State paid regardless of the person's means.

427. In connection with application of paragraph 2 of article 5 of the Convention, the representative said that Tunisian law was silent on the matter of universal jurisdiction. Until the Reform Commission finished its work on harmonizing Tunisian law with the Convention and thus closing any loopholes, such matters would have to be decided by Tunisian judges, with reference to the precedence of international agreements over internal law. As for how foreign sentences were enforced, he said that the exequatur procedure was adopted, except where precluded for reasons of public order.

428. With reference to the questions raised on article 7 of the Convention, the representative said that Tunisian law did not consider torture to be aggravated by the fact that a torturer was a public official, although intimidation by public officials was already punishable by law. He undertook to bring the Committee's criticisms on aggravating circumstances for torture to the attention of the Tunisian authorities and Reform Commission.

429. In relation to the questions raised on article 9 of the Convention, the representative declared that both the judicial and administrative branches of the court system had commissions of magistrates, drawn from many sectors of society, which examined requests for legal aid. That aid was available on production of a certificate, called a "certificat d'indigence", from a responsible person stating that the person seeking aid did not have the necessary means. He was unaware of any cases in which such an application had been refused.

430. In response to the questions raised in connection with the application of article 10 of the Convention, the representative said that at the university level there was a third-year course entitled "Public freedoms", consisting of some 40 hours of lectures which referred to all the major human rights conventions. In the training schools for security forces the concepts of human rights and public freedoms were taught, although no course on the prohibition of torture as such had yet been introduced. At the Military Academy, courses were given on human rights and the prohibition of torture.

431. As for the difference between re-educational work and forced labour, the representative explained that re-education was a minor penalty and played a social role. It was imposed in cases of idleness and exploitation of others' resources. Such work was done in semi-open prisons, where prisoners were allowed out on certain conditions.

432. Replying to the questions raised on article 14, the representative indicated that the use of the term "reparation" in the report had been an oversight, but it was true that victims of violence or torture should have compensation, rather than mere redress. It was customary in Tunisia to view the after-effects of violence or torture as being threefold: financial, moral and physical. Whereas compensation could address the first of those, hospitalization or other treatment might be

required for the latter two, and discussions were taking place within the Reform Commission on the advisability of offering such facilities as part of the compensation awarded to victims. He pointed out that in accordance with the Act of 6 August 1982, the internal security forces were defined as the police, the National Guard and the prison and re-education establishment staff. All of them were subordinate to the Ministry of the Interior.

433. In conclusion, the representative of the State party declared that despite its achievements, Tunisia was aware of the remaining problems and the authorities were determined to improve matters. They would certainly take account of the remarks made by the members of the Committee. He assured the Committee that all the documents and statistics requested would be transmitted to the Committee.

434. The members of the Committee welcomed the developments in the area of human rights that had taken place in Tunisia since November 1987, and thanked the Tunisian representatives for their introduction and replies to the questions asked by members of the Committee. They expressed hope that the still existing discrepancies between the Convention and internal legislation could be remedied as soon as possible, and that replies on all unanswered questions would be provided in the next report, which was due in four years' time.

Netherlands

435. The Committee considered the initial report of the Netherlands (CAT/C/9/Add.1) at its 46th and 47th meetings held on 25 April 1990 (CAT/C/SR.46 and 47).

436. The report was introduced by the representative of the Netherlands who, stating that a report on the Netherlands Antilles would be provided at a later date, informed the Committee of the autonomy that both the Netherlands Antilles and Aruba enjoyed within the constitutional framework of the Kingdom of the Netherlands. He recalled the role played by his country in the elaboration of the Convention, particularly in the original Declaration against Torture, which had been a joint Dutch-Swedish initiative.

437. The representative pointed out that the greatest difficulty in drafting Dutch legislation to implement the Convention had been the formulation of a suitable definition of the offence of torture. In order to satisfy its obligations under the Convention, the Netherlands had chosen to promulgate a separate act dealing with the offence of torture. Further problems had arisen regarding the obligation to establish universal jurisdiction, but those had been overcome and the principle had now been incorporated into Dutch legislation.

438. The representative from Aruba introduced the part of the report relating to the island, pointing out that Aruba had acquired its "status aparte" in January 1986, and had implemented its own Constitution and other legislation in accordance with the Charter, the highest source of law in the Kingdom of the Netherlands. He stated that although there was no specific regulation in the Aruban judicial system with respect to torture, the Constitution contained provisions making torture a criminal offence, and many articles of national law contained provisions to protect individuals against torture and other cruel, inhuman and degrading treatment.

439. The members of the Committee welcomed the report and thanked the representatives of the Netherlands for their short but succinct oral

presentations. They felt, however, that although the report could be regarded as a pertinent analysis of the Convention, and reflected parliamentary discussion of its implementation, it lacked statistical data and illustrations of the practical application of the Convention within the country.

440. Members then asked, in general, whether the reference in the report to officials in the service of a foreign power meant a post in the foreign Civil Service, and whether this involved the application of extra-territorial law. Clarification was sought on paragraph 17 of the report, which suggested that the Convention's description of prohibited acts invited interpretations based on analogy. They also wished for information on the expediency principle in the country's legislation and the implication that the Public Prosecution Department could decide not to prosecute certain cases for reasons of public interest. Clarification was also requested on paragraph 18 of the report that torture was not an offence unless the victim was deprived of his liberty. It was noted that, under article 44 of the Criminal Code, being a police officer was regarded as an "aggravating circumstance" in the abuse of authority and clarification was sought on that point. Finally, it was asked how the text of the Convention was disseminated in the Netherlands.

441. With reference to article 1 of the Convention, members requested further clarification of the definition of torture within Dutch legislation. It was asked why, when ratifying the Convention, the Government had made a reservation on article 1 regarding lawful sanctions. It was further asked how the problem of incompatibility between the Convention and domestic law could be resolved, since this was a general problem and not just applicable to the Netherlands.

442. Members noted that under articles 42 and 43 of the Criminal Code persons obeying orders would not be liable to punishment and, since that would be incompatible with article 2 of the Convention, clarification on that point was sought.

443. Turning to article 4 of the Convention, members wished to know the maximum term of imprisonment for offences carrying a life sentence. It was noted that no prosecutions for torture had occurred in the Netherlands since the Second World War, and confirmation of that was requested. Information was also sought on whether allegations of police brutality had occurred, and, if so, the response to such allegations.

444. It was asked why the Netherlands had decided not to make a reservation on paragraph 1 (c) of article 5 of the Convention if, as stated in paragraph 39 of the report, it was contrary to Dutch legal tradition to establish criminal jurisdiction on the basis of the nationality of the victim, and therefore the relevant provision of the Convention had not been implemented.

445. With reference to article 6, it was asked what were the conditions in which pre-trial detention or provisional arrest for the purposes of extradition could be suspended, and how such conditions served to guarantee the availability of the person concerned.

446. Clarification was requested on whether article 7 of the Convention gives effect to the aut dedere aut judicare principle, as was implied in paragraph 47 of the report.

447. Turning to article 8, further information was requested on the statement in paragraph 49 of the report that extradition may only take place pursuant to a treaty.

448. Members requested an elaboration of the brief information supplied on article 10 of the Convention, particularly on the training of police officers, prison personnel, the military and medical doctors in the treatment of prisoners; whether such training was provided in medical faculties in all universities and, if so, the number of hours spent on such teaching; who was responsible for such teaching; and whether it was provided at the pre- or post-graduate levels.

449. Precise information was requested on article 11 of the Convention, particularly on prison regulations and custody and treatment of prisoners. It was also asked whether incommunicado detention existed in the Netherlands and under which circumstances, and the length of pre-trial detention. Information was sought on the circulars to prison governors referred to in paragraph 59 of the report.

450. With reference to article 12 of the Convention, it was asked whether officials of the Public Prosecution Department would be obliged to obey illegal instructions given to them by government officials.

451. With regard to article 13 of the Convention, members requested further information on the post of Ombudsman, how he was appointed, and whether the post was parallel to other authorities or could be considered as an appeals body. They also wished to know whether judgement had been received on the case currently before the European Court of Human Rights concerning the acceptance of anonymous statements in courts in the Netherlands. It was asked why the creation of a new identity for a threatened witness would be unacceptable in the Netherlands, as was stated in paragraph 68 of the report. Clarification was sought on the statement contained in paragraph 69 of the report, that it was criminal to make explicit threats.

452. Turning to article 14 of the Convention, members asked for further information on the moral and medical aspects of rehabilitation of torture victims, other than financial compensation; whether applications had been made to the Criminal Injuries Compensation Fund, and whether they had been successful.

453. With reference to article 15 of the Convention, members wished to know whether or not that article was considered a sufficient juridical basis for the exclusion of evidence obtained under duress and, if so, how that was noted in law.

454. Members raised several questions on how the Convention was implemented in Aruba and considered that the report on the island lacked precise information on most of the articles of the Convention. A more detailed report was requested by 1 September 1990, to allow for its consideration by the Committee at its next session in November 1990, together with the report to be submitted concerning the Netherlands Antilles.

455. In response to the general questions raised by members of the Committee, the representative confirmed that the definition of a public official was related to the obligation to establish extra-territorial jurisdiction, and that so far the notion had been defined only with respect to Dutch law. He stated that an interpretation by analogy was not permitted under Dutch law, that under Constitutional law the Government and Parliament together made up the legislature,

and "in the opinion of the Government" meant in the opinion of the legislature. With reference to the expediency principle, he pointed out that the Convention did not require mandatory prosecution for torture and States could rely on the expediency principle if that was the basic principle of their legal system. However, he could not imagine any case where prosecution for acts of torture could be excluded on the grounds of public interest. He informed the members that the deprivation of liberty had been formulated under domestic law in order to ensure that such deprivation had been legally and not illegally ordered. With regard to article 44 of the Criminal Code, he stated that paragraph 76 of the report fully explained the meaning of that provision in relation to aggravating circumstances and that by their very nature, the offences in question could be committed only by public officials. He stated that the text of the Convention was disseminated through the _Official Journal_.

456. Turning to article 1 of the Convention, the representative stated that, with regard to the definition of torture, his country had tried faithfully to translate the language of the Convention into language with which practitioners of domestic law were familiar. One difficulty had been the use of "such as" (_notamment_) in article 1, and he referred members to the report for a full account of the Netherlands' attempt to solve that problem. He said that his Government understood that the term "lawful sanctions" in paragraph 1 of article 1 of the Convention applied to sanctions which were lawful not only under national but also under international law. The purpose of its declaration, which was _not_ a reservation, was to strengthen the Netherlands' obligation under the universal jurisdiction principle, especially because of the uncertainty of the Convention's provisions regarding forms of corporal punishment. He said that perhaps the question of incompatibility between the Convention and domestic laws of States was insoluble, since interpretations by States would, in all good faith, lead to different results. Indeed, a definitive answer to that question might make the task of drafting international treaties impossible.

457. With reference to article 2 of the Convention, the representative suggested that there may have been an error in translation in paragraph 32 of the report, since the original English text cited those articles of the Criminal Code which provided a defence on the grounds of orders from a superior officer, but not in the case of acts of torture.

458. With regard to article 4 of the Convention, the representative stated that the maximum duration of imprisonment, where provisions existed for life sentences, was limited to 20 years. For offences where no provision existed for life sentences, the maximum term was 15 years. He confirmed that there had been no prosecutions for torture in the Netherlands since the Second World War. He could not claim that there had never been instances of police brutality to obtain evidence, although he stressed that no prosecutions for offence had occurred. Any complaints received regarding police misconduct related to street violence or involved corruption or falsification of records, but not physical violence.

459. Turning to article 5 of the Convention, and in particular paragraph 1 (c), the representative stated that the Netherlands understood that the obligation to establish jurisdiction on the basis of passive personality only existed if it was thought appropriate by the State party. That was contrary to the basic principle of Dutch law, although the universality principle had been introduced in his country to cover fully the scope of the application of the principle of passive personality.

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460. With reference to article 6, the representative stated that the measures to guarantee availability of persons when pre-trial detention had been suspended included the surrender of a passport and regular attendance at a police station.

461. In connection with the question of aut dedere aut judicare, the representative said that article 7.1 of the Convention contained a reference to the cases contemplated in article 5 of the Convention, which linked the cases to non-extradition to another party and not to any third State. That was not found in any similar convention, and he believed that that provision of the Convention against Torture thus represented a step forward in legal clarity.

462. Turning to article 8 of the Convention, the representative pointed out that paragraph 51 of the report clearly stated that the Netherlands accepted the Convention as the necessary legal basis required by its Constitution for extradition to other parties of the Convention.

463. With regard to article 10 of the Convention, the representative said that medical ethics were taught both at university and through seminars at human rights institutes. He agreed that the information provided on that article was short, but that was because as there had been no cases of torture for so long, practical problems had not been encountered. He added that recruitment standards for police and prison personnel were very high and involved a two-year training period. Prison staff were expected to maintain good relationships with detainees on a one-to-one basis. Possible intimidation of detainees was avoided by ensuring that there were always two prison officers present during the examination of a detainee or suspect. Members were informed that the Government fully supported Dutch doctors who, when working in foreign countries, refused to co-operate with authorities asking for fitness certificates to enable torture to be perpetrated. In November 1986, the Ministry of Foreign Affairs issued a formal declaration to the effect that it was a violation of the Principles of Medical Ethics proclaimed by the General Assembly of the United Nations in 1982 for medical personnel to participate in the certification of fitness of prisoners. A copy of the declaration was provided for members.

464. In response to questions raised under article 11, the representative stated that the maximum period of pre-trial detention was 102 days, after which the case must be brought to court, and that such detention was under the constant scrutiny of the judiciary who ensured that detainees were seen within four days of arrest and then at regular intervals. Incommunicado detention did not exist in the Netherlands. Prisoners could be isolated for limited periods not exceeding 14 days, but solely as a disciplinary measure which in no way affected their right to communicate with lawyers, family or international bodies. The circulars referred to in paragraph 59 provided information on the Convention in language accessible to the layman.

465. With reference to the question raised under article 12, the representative explained that that was a theoretical problem as such a case had never occurred, but if it ever did it would mean the immediate political death of the minister involved in issuing such instructions; in practice the provision was seldom applied to individuals and only to the issuance of general instructions.

466. With reference to article 13, the representative stated that the Ombudsman was appointed by Parliament following an open election of candidates and that the post carried its own budget and therefore the Ombudsman was financially independent. He

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informed the members that the Netherlands had been convicted of a breach of article 6 of the European Convention on Human Rights, under a decision passed on 20 November 1989 by the European Court of Human Rights. With regard to the creation of a new identity for witnesses, he said that that would be totally unacceptable in the Netherlands, as it would be considered a gross violation of human rights to force a person to change his identity in order to testify in court.

467. With regard to article 14, the representative stated that as the Netherlands had had no cases of prosecution for torture, the question of moral and medical rehabilitation had not arisen. However, it did have experience of dealing with persons suffering from serious offences committed against them, either through war or acts of terrorism, and such experience would be available if necessary. Applications had been made to the Criminal Injuries Compensation Fund, but only by individuals against other individuals not against public officials, and they usually related to medical expenses of the victim.

468. With reference to article 15 of the Convention, the representative stated that the specific exclusion of evidence obtained through acts of torture was because, in addition to no such acts having occurred, Dutch legislation already contained a provision under article 338 of the Criminal Procedure Act that stated that only legally acquired evidence was admissible in court.

469. In response to questions and the request for an additional report made regarding Aruba pursuant to rule 67, paragraph 2, of the Committee's rules of procedure, the representative agreed that a further report on Aruba would be submitted together with the report on the Netherlands Antilles in time for the next session of the Committee against Torture.

470. In concluding their consideration of the report, the members of the Committee thanked the representatives for the detailed response to questions raised. They noted that torture did not occur in the Netherlands and that there had been no allegations of police brutality in obtaining evidence, and they believed that few countries could make such a claim. They wondered, however, whether the Netherlands had not placed restrictions on articles 1 and 4 of the Convention and suggested it might be useful for the Government of the Netherlands to examine those articles once again. The members believed that the discussion had been a fruitful one.

China

471. The Committee considered the initial report of China (CAT/C/7/Add.5) at its 50th and 51st meetings, held on 27 April 1990 (CAT/C/SR.50 and 51).

472. The report was introduced by the representative of the State party, who emphasized the efforts made by his Government to combat torture and safeguard human rights and stated that all the relevant provisions of the Convention were reflected in Chinese domestic law. There was no special legislative procedure for incorporating international conventions into domestic law; they automatically entered into force upon ratification. Acts of torture as defined in the Convention were strictly prohibited under Chinese law. It was strictly forbidden for a State functionary to extract confessions through torture or to obtain evidence through threats or other unlawful means. Similarly, it was forbidden for law enforcement officials to mistreat or insult a suspect and for prison staff to torture or mistreat detainees. Any breach of those prohibitions was punishable by law.

473. Regarding the legitimate rights and interests of prisoners, the representative emphasized that not only was it forbidden to beat or abuse prisoners or subject them to corporal punishment, but also that they were guaranteed medical care and safety at work. He added that penal sanctions under Chinese law were designed to reform prisoners and, by re-education through labour, to help them break with their past and again become citizens useful to society. He also referred to Council of State regulations dated 17 March 1990 concerning detention centres, which dealt with the legitimate rights and interests of prisoners and specified that such centres must combine strict vigilance with education and vigorously exclude blows, abuse, corporal punishment and maltreatment. Moreover, detention centres were placed under the supervision of the procuratorates, and appeals and complaints from prisoners must be brought before the competent bodies as rapidly as possible.

474. With a view to preventing acts of torture, the Government paid the closest attention to the selection and training of judicial personnel, medical workers and public servants and required them to have a high standard of professional ethics. With the same aim, the media played an important supervisory role by exposing unlawful practices. In addition, citizens had to be aware of their dual responsibility in regard to respect for the laws and monitoring of the acts of State officials. He also explained that his Government exercised its criminal jurisdiction in respect of offences of torture whether or not committed on Chinese territory and that it wished to develop international co-operation in the area of extradition and judicial assistance.

475. The representative added, however, that it was difficult to eliminate torture. In that connection, the Chinese Government had adopted appropriate measures, but was aware that there was still much to be done not only in the matter of legislation but also in the fields of justice, administration, information and education.

476. The members of the Committee welcomed with interest the report, which contained fairly detailed information on the constitutional framework and demonstrated the Government's desire to co-operate with the Committee. They nevertheless expressed regret that the report had been drafted in too general a manner and failed to give details of the practical application of each of the Convention's provisions in China. It did not therefore conform to the Committee's general guidelines regarding the form and contents of initial reports (CAT/C/4/Rev.1).

477. Members requested further information on the mechanism for incorporating the Convention into Chinese law and, in particular, on the precise place occupied by the Convention in Chinese domestic law. In that connection, they observed that, although being directly applied in China, the Convention should nevertheless be complemented by suitable domestic legislation. They also requested detailed information on the characteristics and jurisdiction of the various courts, particularly the people's courts, possible emergency courts, military courts and administrative tribunals, and asked how judges and prosecutors were appointed, how their independence was guaranteed and what were the relationships between, and the respective powers of, the public security organs, the examining magistrate, the procuratorate and the courts.

478. With regard to the death penalty, members asked what were the offences for which it could be pronounced, what were the applicable remedies available, and how many times it had been pronounced and carried out in recent months. Further

information was requested regarding any factors or difficulties affecting the implementation of the Convention; in that connection, it was asked whether any cases of extrajudicial execution or unlawful detention had come to the attention of the Chinese authorities and, if so, what steps had been taken to punish those responsible.

479. With regard to articles 1 and 4 of the Convention, members asked whether there was a specific definition of the crime of torture under Chinese law and whether certain forms of corporal punishment were authorized in China. Information was also requested on the severity with which the crime of torture was punished, in relation to other offences.

480. With regard to article 2 of the Convention, members expressed a desire for fuller information on the measures taken to prevent acts of torture and the general provisions prevailing in the event of exceptional circumstances. It was also asked whether an order from a superior or a public authority could be invoked to justify torture.

481. Members requested further details on the implementation of articles 5 to 9 of the Convention, particularly with reference to the principle of universal jurisdiction laid down by those articles, and on article 3 of the Criminal Law mentioned in paragraph 44 of the report. Members noted with interest that, since 1985, 520 million citizens had received legal education and, in that connection, asked what measures had been taken to implement article 10 of the Convention concerning education and information regarding the prohibition against torture.

482. With regard to article 11 of the Convention, members asked whether incommunicado detention existed in China and, if so, what were its duration and limits; whether a prisoner could demand a medical examination and, if so, whether it was the prisoner or the public authorities that named the doctor. Clarification was requested on article 5 of the Regulations on Arrest and Detention, under which the organ responsible for the arrest was exonerated from notifying the family of the arrested person within 24 hours of the reason for arrest and the place of custody where such notification would hinder the investigation or there was no way to notify them. An explanation was also requested of the provision whereby a public security organ could detain any person who was "proved by conclusive evidence to be guilty". It was also asked how many prisons and prisoners there were in China; what was the duration of pre-trial detention; where there were military prisons and, if so, how they were administered; what were the functions of members of the armed forces in regard to detention; what was the distinction drawn between reform and rehabilitation through labour; whether there were still specific reform establishments for counter-revolutionary offenders; and whether the practice of reforming counter-revolutionaries through labour was not contrary to the requirements of article 16 of the Convention. It was also asked how political prisoners were treated, what the average length of their detention was and whether they were tried by ordinary courts or by special courts. Lastly, further information was requested on the machinery available for supervising detention conditions and on the consequences of the reform mentioned in paragraph 17 of the report.

483. With regard to articles 12 and 13 of the Convention, members noted with interest that a very large number of human rights violations had been considered in accordance with the law. They asked for what offences the 20,000 cases mentioned had been brought to court and what had been the results of those cases. They also

inquired how many complaints had been lodged for acts of torture; how many officials had been prosecuted for torture and with what results; what means were available to citizens to prove that they had been victims of such acts; and what procedures were followed for receiving and investigating complaints on the subject.

484. It was also noted that the Chinese Government had not hesitated to recognize in its report that torture had yet to be eliminated completely. In that connection, members referred to the numerous allegations of torture in China, particularly in Tibet, mentioned both in the report prepared by the Special Rapporteur to examine questions relevant to torture (E/CN.4/1990/17) and in the information transmitted by non-governmental organizations, and asked what was the Government's position in that respect. More specifically, questions were put concerning the particular status of Tibet in the People's Republic of China, the measures adopted to protect the rights of the Tibetan population and, more generally, steps taken to combat torture practices with a view to their final elimination.

485. With regard to article 14 of the Convention, members inquired how the Chinese authorities ensured the redress, compensation and medical treatment that torture victims needed, and requested information on the form of redress, the average amount of compensation granted and the number of cases in which it had been granted.

486. Lastly, with regard to article 15 of the Convention, members asked whether a statement obtained through torture could be invoked as evidence in legal proceedings.

487. In reply to questions raised by members of the Committee, the representative explained that any convention acceded to by China became binding as soon as it entered into force. Furthermore, in the event of a discrepancy between provisions of an international instrument and domestic law, the latter was brought into line with the former. Where subtle differences remained, international instruments took precedence over domestic law. He therefore emphasized that offences under the Convention were regarded as offences under Chinese domestic law. He added that, according to the Constitution, People's Courts and the People's Procuratorate were independent of the administrative organs, social groups and individuals. The judicial system was composed of the Supreme People's Court, the Provisional District and Special People's Courts, and the Local Courts and no adjudication could take place outside those courts. With respect to the appointment of judges, he stated that the system was currently being reformulated. Judges and prosecutors were all appointed by the administrative organs and were subjected to strict tests, not only of their ability, but also of their moral and other qualities.

488. With regard to the death penalty, he stated that the need for capital punishment was determined by the overall social and political situation and the need to combat crime, as well as by the wishes of the population as a whole. However, its application was extremely limited in scope. The death sentence was thus applicable only to the most serious crimes. Furthermore, where the death sentence was not immediately implemented, the sentence could be suspended for two years. If, within that period, the criminal showed himself repentant or of exemplary conduct, the sentence might be reduced to 15 to 20 years. The sentence was not carried out in the case of persons under 18 years of age. Moreover, provisions existed in the Constitution and the Criminal Procedure Law to prevent summary or arbitrary sentences. To avoid the inappropriate use of capital punishment, the Criminal Procedure Law provided for a checking procedure whereby

sentences were confirmed by the Supreme Court, or by the Higher People's Court on the authorization of the Supreme Court.

489. In response to questions raised in connection with articles 1 and 4 of the Convention, the representative emphasized his Government's firm opposition to torture and other cruel, inhuman or degrading treatment or punishment and stated that Chinese domestic law defined torture and laid down penalties for such practices, and that any person found guilty of having used torture or other inhuman or degrading treatment to extract a confession was punished to the full extent of the law.

490. With reference to questions raised in connection with article 2 of the Convention, the representative declared that, in the view of his Government, war, the threat of war, domestic instability, an emergency situation or orders from a superior were no excuse for resorting to torture.

491. Referring to articles 5 to 9 of the Convention, the representative stated that the provisions governing extradition and judicial assistance in criminal matters served as a basis for co-operation with other countries.

492. In reply to questions raised under article 10 of the Convention, the representative explained that the popularization of legal education had received great attention from the Party and the Government. The content of the legal education programme was such that it was not only internal laws that were publicized and popularized, but also international laws and United Nations instruments, including the Convention against Torture. The courses were run at various levels, with particular emphasis on training courses for law enforcement officials. Furthermore, a survey of United Nations activities in the field of crime prevention and selections of relevant documents had been published. The representative emphasized that the programme had yielded results throughout the country, leading, in particular, to a reduction in the incidence of cruel and inhuman treatment.

493. With regard to article 11 of the Convention, the representative stated that there were no cases of secret detention or of prisoners being held incommunicado, except when it was necessary to segregate male and female prisoners, adult and young prisoners, or certain categories of prisoners from other inmates. He added that there had been cases - albeit very exceptional - where in the interests of the investigation or to prevent the release of information or complicity, families had not been notified of a person's arrest. In normal circumstances, however, the public security organs would inform the families. Referring to paragraph 46 of the report and the question of conclusive evidence, he drew the Committee's attention to the provisions of article 41 of the Criminal Procedure Law under which a security organ could detain an active criminal or suspect. Regarding the duration of pre-trial detention, he explained, inter alia, that, under article 48 of the Criminal Procedure Law, where a person was arrested by a public security organ, the People's Procuratorate had to review and approve the arrest within three days. That period might be extended by one to four days. The period of pre-trial custody was, in normal circumstances, no longer than two months. He also stated that the total number of persons tried and sentenced for serious offences in 1989 had been 481,658, and that offences committed by soldiers on duty were dealt with by a military procuratorate and tried by military organs.

494. Responding to other questions, the representative explained that there were no political prisoners or prisoners of conscience in China. Under Chinese criminal law, persons whose activities were aimed at overthrowing the people's democratic dictatorship and the socialist system or who wrought harm against the People's Republic of China had committed a counter-revolutionary offence. To have committed such an offence, not only must a person have tried to overthrow State power and the socialist system, but his acts must have constituted a threat to the security of the State. He added that rehabilitation through labour was an administrative measure comprising reform through compulsory education aimed at preventing and reducing offences. It was mainly imposed on persons who had refused to repent of repeatedly upsetting the social order or had committed minor offences for which punishment was thought inappropriate. The persons ordered to receive rehabilitation could appeal for review or file suit in court. Persons undergoing rehabilitation through labour did so in special institutions set up by the State, in which they received political, cultural and technical education and were placed in production units, which helped to rectify their aberrant opinions and habits and give them a better idea of law and culture while they learned skills. Of persons leaving the rehabilitation organs, over 90 per cent had been found to have reformed, becoming law-abiding citizens and living from the fruits of their own labour.

495. Referring to the rights and treatment of detainees, the representative stated that inspection bodies had been set up to prevent mistreatment in prisons. In 1989, 382 cases of violations of the rights of prisoners had come to light. In order to guarantee their legal rights and livelihood, prisoners enjoyed the right of appeal, the right to legal defence, the right not to be insulted and the right to security; they had the right to exchange letters and to meet members of their families; and they received medical care and were given the healthy environment they needed. Prisoners received a monthly allowance and, if they fulfilled their production quota, received a bonus. They worked an eight-hour day and were not required to work beyond the limits of their physical endurance. In every prison, there were regular political, cultural and technical classes that enabled prisoners to reintegrate smoothly into social life. He added that, since May 1983, responsibility for prisons had been confined to the judicial organs. There was therefore mutual supervision between public security organs and courts and, furthermore, management and re-education of prisoners had been strengthened.

496. In relation to articles 12 and 13 of the Convention, the representative stated that procedures guaranteeing the right of victims of torture to appeal for compensation had been improved. Furthermore, in the few cases in which law enforcement officials had been found guilty of extracting confessions through torture or otherwise infringing the rights of detainees, they had been punished. He added that incidents involving the beating of prisoners had fallen by 87 per cent in 1989 as compared to 1988.

497. With regard to other questions, the representative stressed that following the anti-governmental disturbances in 1989, there had been no summary arrests or detentions of peaceful demonstrators, summary executions or widespread torture. A handful of persons engaged in anti-governmental rioting and criminal activities, such as looting, arson and murder, had been arrested. He added that those individuals had been a threat to China and its social system and had violated the rights of the majority, as well as the Constitution and Chinese penal law and that they had been tried in strict conformity with Chinese law. With regard to questions raised about Tibet, he explained that Tibet had enjoyed full autonomy

since 1956. On a number of occasions over the past 30 years, a small minority had fomented disturbances, killing and injuring police officers and violating other Chinese laws. Those offenders had been tried in full conformity with the law. He also stated that allegations of torture in Tibet had proved to be entirely unfounded and that any further allegations would be investigated.

498. With reference to article 14 of the Convention, the representative explained that, under article 41 of the Constitution, persons who had been the victims of human rights violations at the hands of law enforcement officials could ask for compensation.

499. In connection with article 15 of the Convention, the representative drew the Committee's attention to article 32 of the Criminal Procedure Law that stipulated that the use of torture, threats or other violent measures to obtain evidence was prohibited.

500. The members of the Committee thanked the representative of China for his co-operation. They observed, however, that there were still some issues which needed clarification or additional information. They referred, in particular, to alleged cases of torture mentioned in the report of the Special Rapporteur of the Commission on Human Rights on questions relevant to torture, penalties applied in cases of torture, use of evidence obtained as a result of torture in judicial proceedings, as well as the definition of torture in Chinese legislation, the role of medical personnel in establishing whether torture had taken place, the application of the death penalty, the organization and independence of the judiciary, conditions of detention, contacts of detainees with their families, and military jurisdiction. An inquiry was also made regarding whether the Chinese Government was interested in co-operating with the United Nations Centre for Human Rights, which was expanding its programme of advisory services and technical assistance.

501. In view of the number of questions which had remained unanswered, the Committee, pursuant to rule 67, paragraph 2, of its rules of procedure, requested the Government of China to submit to the Committee by 31 December 1990 an additional report containing the information requested in accordance with the requirements of the Convention and the Committee's general guidelines.

502. The representative declared that his Government attached great importance to humanitarian values and had always opposed torture. The situation was not perfect in his country, but the Government was working hard to prohibit and prevent torture. He added that, in the context of a population of 1.1 billion, cases of torture were not numerous. He also stated that his Government was already in close contact with the Centre for Human Rights with regard to matters of mutual concern. Finally, he stated that he was not authorized to accede to the Committee's request for an additional report; however, he assured the Committee that he would transmit that request to his Government.

Ukrainian Soviet Socialist Republic

503. The Committee considered the initial report of the Ukrainian SSR (CAT/C/5/Add.20) at its 52nd and 53rd meetings, held on 30 April 1990 (CAT/C/SR.52 and 53).

504. The report was introduced by the representative of the State party who stated that a genuinely revolutionary process was currently taking place in the Ukrainian SSR, where the reforms being adopted were intended to modify radically the legal status of the individual, to strengthen democracy and establish the rule of law. On 15 May 1990, the Supreme Soviet of the Ukrainian SSR was to begin some important legislative work dealing, in particular, with the amendment of the Constitution of the Republic and legal reform. The Supreme Soviet would, in addition, be considering drafts of a new criminal code, a new code of criminal procedure and a new code on re-education through work.

505. The representative supplemented the information contained in the report by informing the Committee of the measures adopted by his Government since the submission of the report and gave a detailed description thereof. He referred, inter alia, to the establishment of a provisional Committee against Criminality whose mandate included supervision of the activities of the bodies responsible for applying the law. New legislative provisions concerned the time-limits on detention during the investigation and strengthening the rights of the accused during such investigation. In that connection, he emphasized that cases of abuse of power on the part of agents of the Ministry of the Interior had been decreasing every year; in 1989, only eight officials had been found guilty of such abuse, as against 67 in 1985.

506. He also informed the Committee that, since 1977, humanization of penal legislation had made it possible to replace certain sentences of imprisonment by fines or sentences to rehabilitation through work. Only one person sentenced out of three (as against one out of two previously) had to serve a term of imprisonment. Over the last three years, the number of persons detained in work camps had fallen by about one half to 88,000 at the beginning of 1990.

507. The representative stated that the new legislation reduced the number of offences punishable by death, although the death penalty would be retained in the new criminal code. He said that an alternative penalty of deprivation of freedom would be provided for in all cases and that the death penalty could not be applied to minors, women or persons over the age of 60.

508. To conclude, the representative stated that the Ukrainian SSR attached much importance to the appropriate training of the personnel responsible for applying the laws. In all the Republic's law schools and faculties, the study of international human rights instruments had pride of place.

509. The members of the Committee congratulated the representative of the State party on his introduction of the report and for providing the Committee with additional information, and praised the efforts made by the Ukrainian SSR to amend its legislation so as to ensure greater respect for human rights. Having noted that the initial report was both clear and dense, though very succinct, they asked for some clarifications on certain aspects, both general and specific, of the application of the Convention against Torture in the Ukrainian SSR.

510. Generally speaking, the members asked for details on the machinery for applying the Convention in domestic law and on the possibilities of citing its provisions in court. In addition, they recalled that the Ukrainian SSR had entered some reservations on the subject of articles 20 and 30 of the Convention and had not made the declarations provided for in articles 21 and 22.

511. Information was requested on the organization of the judiciary and on the division of powers of the courts according to offences. Questions were also asked concerning the guarantees of the independence of the judiciary, the relationship between the prosecutor and the investigators and the practical steps that had been taken to implement article 56 of the Constitution. Clarifications were requested on the right to redress of persons stating they had been victims of cruel, inhuman or degrading treatment. Lastly, members expressed the view that the average duration of the pre-trial detention provided for in Ukrainian legislation was excessive and asked for more information on the subject.

512. Members of the Committee also wished to know how the rights of the defence were ensured during criminal trials, how legal aid was granted, if there were enough lawyers in the Ukrainian SSR, what penalties were provided for the offences of torture and whether the Government of the Ukrainian SSR was encountering any difficulties in applying the provisions of the Convention against Torture.

513. With respect to the application of article 1 of the Convention, members of the Committee asked whether the term "violence" used in the report covered the definition of torture given in that article, whether forms of corporal punishment existed in the Ukrainian SSR and what legislative provisions had been adopted to limit the application of the death penalty.

514. With regard to the application of article 2 of the Convention, members of the Committee wished to know what was the legal rule establishing the principle that the orders of a superior officer or of a public authority could not be invoked as a justification of torture.

515. In connection with article 3 of the Convention, some members of the Committee, who had noted certain contradictions between paragraphs 32 and 33 of the report, asked whether the Ukrainian SSR regarded itself as competent in the event that an individual to which it had granted asylum was accused of having engaged in torture in another country. They asked for details of the relationship between article 36 of the Constitution and the obligation imposed by the Convention in its article 3.

516. With respect to article 4 of the Convention, some members asked what were the provisions of articles 165 to 167, 175 and 180 of the Criminal Code in general, and of article 175 in particular, what authority was entitled to reach a decision concerning the mental health of persons committed to a psychiatric institution, whether there was any appeal against such a decision and who chose the psychiatrist responsible for judging the mental health of a person.

517. With reference to articles 5, 7 and 8 of the Convention, detailed information was requested on the jurisdiction of the Ukrainian SSR, on the general application of the *aut dedere aut judicare* rule, and on the practical application of article 8 of the Convention.

518. With reference to the application of article 9 of the Convention, some members of the Committee pointed out that the obligation to assist other States in connection with criminal proceedings placed upon the Ukrainian SSR by the Convention was distinct from any obligations it might have contracted under international treaties.

519. In connection with articles 10 to 15 of the Convention, members of the Committee asked whether the personnel responsible for ensuring respect for the law

received specific information on the prohibition of torture and on ways of identifying victims of torture and whether medical personnel was trained in the treatment to be given to such victims. Having noted with satisfaction that the legal system of the Ukrainian SSR provided for full compensation for any harm, including moral harm, done to the victims of torture, some members wished to know whether there was also any provision for medical rehabilitation. They wished to know the contents of the decision by the plenary assembly of the Supreme Court on 27 December 1985, the number of convictions for torture and the penalties applied thereto. On the subject of articles 12, 13 and 14 of the Convention, some members wished to know how many cases had been prosecuted and what the results of the criminal proceedings had been. They also wished to know whether statements or confessions obtained by the use of violence, threats or any other illegal measure could be admitted as evidence in legal proceedings.

520. The representative of the State party, replying to the general questions raised by members of the Committee, referred to the relationship between the Convention against Torture and his country's domestic legislation and pointed out that the Criminal Code and the Code of Criminal Procedure contained no general norms regarding the primacy of international treaties. However, in the Civil Code, the Family Code and other legislative acts it had been proposed that, where there was a conflict between international and domestic law, the international treaty would prevail. It was always permitted to refer to international obligations in judicial procedure. He assured the Committee that, in the preparation of future legislation, the rule of the primacy of international treaties would be enshrined in law.

521. The representative of the State party described in detail the judiciary system, indicating that, in the Ukrainian SSR, a judicial reform process was under way with a view to implementing the principle of the separation of powers and ensuring that judges were genuinely independent. He said that there were no disciplinary tribunals per se. When necessary, a judge's colleagues on the bench would meet to consider any alleged breaches of his professional ethics in the conduct of his work. He confirmed that there were no political prisoners in the Ukrainian SSR. With regard to overcrowding in prisons, he pointed out that over the past three years the prison population had been halved to 88,000. The legal norm was a minimum of two square metres per person and two and a half square metres for minors. There was therefore no overcrowding, and the situation would improve further in the longer term.

522. Turning to the questions concerning custody, preventive detention, the rights and obligations of investigators and the division of authority between investigators and prosecutors, he informed the Committee that persons could be detained only when there were grounds for assuming that a crime had been committed or when there was a likelihood that a person would try to escape the jurisdiction of the court or might substantially affect the course of justice. If there were no such grounds, other methods were used: for example, restriction on the person's right to leave a particular locality without the investigator's permission. The investigators were bound to conduct their investigations and the procurators were bound to oversee the whole investigation process, regardless of whether the investigating body was an organ of the Ministry of Internal Affairs, the Procurator's Office or the Committee for State Security. It was currently being considered to merge investigating bodies into one single system with a view to strengthening legality and the rights of suspects and accused.

523. As for cases involving breaches of discipline, he said that out of the 365 people investigated for various breaches, 247 had been examined in 1989. Of the remainder, seven had been sentenced for assault.

524. With reference to the questions raised in connection with article 1 of the Convention, he stated that the term "torture" did not exist in Ukrainian legislation. The use of violence or humiliating treatment referred to in legislation was, however, regarded as physical or mental torture. A special chapter in the law on crime against the administration of justice established liability for a whole range of unlawful acts. There were no corporal punishments in the Ukrainian SSR and such treatment would be regarded as an act of violence against the prisoner and be punished accordingly. As for the death penalty, he stated that the trend was to move towards its abolition. The 17 capital offences enumerated in the old Criminal Code had been reduced to 6 in the new Code: crimes against the person, aggravated homicide, high treason, terrorism, rape of a minor and sabotage. In practice, no death sentences had been carried out on women in general in the past 15 years, and in the last 10 years there had been only one case, involving a war crime dating from the Second World War, of a person over the age of 60 being executed.

525. With regard to questions raised on article 2 of the Convention, the representative pointed out that, under current legislation, the person ordering the torture was as liable as the executor of that order. As for the complaints lodged against officials, he said there had been about 30,000 complaints from people who had served sentences, of which about 2 per cent or 2.5 per cent had been upheld. He also provided the Committee with detailed information regarding solitary confinement and explained that the law clearly regulated the actual duration of custody; for administrative offences, a person could be held for no more than three hours; where a person was suspected of having committed a crime, detention could last no longer than three days. Furthermore, the Procurator must be notified of the arrest within 24 hours.

526. The representative of the State party confirmed that article 3 of the Convention against Torture would protect a person against extradition from the Ukrainian SSR, although his case might not be covered by article 36 of the Ukrainian Constitution.

527. With reference to article 5 of the Convention, the representative stated that where the offence was committed on Ukrainian territory, all persons, whether citizens, stateless persons or aliens enjoying diplomatic immunity, were liable under criminal laws of the Ukrainian SSR. Where the offence was committed abroad, citizens of the USSR committing such crime were liable to prosecution on their return. Currently, persons committing such offences were liable under Ukrainian law, regardless of whether they were also liable to prosecution abroad. With regard to foreigners, he emphasized that if the crime was not provided for in an agreement between the Ukrainian SSR or the USSR and the foreign State, such persons were not liable to prosecution for the offence. In that case, the laws of the place where the offence has been committed were applicable.

528. Replying to the questions on article 10 of the Convention, the representative informed the Committee that a special human rights training programme was being run, under which practically all educational institutions gave special courses on human rights which included the Convention against Torture in their curricula.

529. Turning to the questions raised in connection with article 11 of the Convention against Torture, the representative said that, for the moment, a lawyer was not present when a person was taken into custody. An amendment to the legislation according to which a lawyer could be involved from the moment a person was taken in custody was currently being considered. However, he further stated that a lawyer was not normally present when a person was committed to a mental hospital, although if the person requested the services of a lawyer, he could do so. He confirmed that such committal proceedings could be appealed and provided detailed information on the circumstances in which a person could be committed to a psychiatric institution. He pointed out, in that respect, that since 1988 much progress had been made in that field. The representative also gave a detailed description of the supervisory and monitoring functions carried out by the Procurator's Office, the Committee against Criminality, the permanent commission of people's deputies to be set up within the new Supreme Soviet, as well as by a number of non-governmental organizations.

530. With regard to articles 12 to 15 of the Convention, the representative clarified the decision of the Supreme Court of the Ukrainian SSR concerning penalties against persons exceeding their powers or official authority. He further explained that the definition of the term "violence" had been extended to cover the illegal deprivation of liberty; striking; beating; acts of torture, and acts causing bodily harm, thus covering all acts of physical torture. He added that the Supreme Court had expanded the definition to include psychological violence too. Thus that decision was a significant addition to the legislation, and was in keeping with the Convention against Torture, which had inspired it directly.

531. Responding to other questions, he said that compensation would be given for both actual and direct damage to health and for any reduction in the ability to work; that the Supreme Court of the Ukrainian SSR had in 1989 heard nine actions seeking compensation for damage to health and that none of the cases involved torture. He also provided the Committee with statistical data on the measures taken to rectify past illegalities. Lastly, he confirmed that evidence obtained as a result of torture would, without reservation, be considered inadmissible.

532. The members of the Committee thanked the representative of the Ukrainian SSR for the replies given and for the report submitted. It was noted with great satisfaction that legislative and other measures had been taken or were about to be taken to improve human rights safeguards in general and the application of the Convention against Torture in particular. The Committee took note with satisfaction especially of the changes envisaged by the forthcoming reform of the penal legislation of the Ukrainian SSR and hoped that information on the outcome of those changes would be included in the next periodic report.

V. CONSIDERATION OF INFORMATION RECEIVED UNDER ARTICLE 20 OF THE CONVENTION

533. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to co-operate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

534. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

535. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

536. The Secretary-General, in pursuance of rule 69 of the rules of procedure, brought to the attention of the Committee at its fourth session information that had been submitted for the Committee's consideration under article 20, paragraph 1, of the Convention. The Committee's work under article 20 of the Convention thus commenced at its fourth session in four closed meetings.

537. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION

538. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee against Torture for consideration. Twenty-three out of 52 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are Algeria, Argentina, Austria, Canada, Denmark, Ecuador, Finland, France, Greece, Hungary, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey and Uruguay. No communication may be received by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

539. Consideration of communications under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22 (submissions from the parties and other working documents of the Committee) are confidential.

540. In carrying out its work under article 22 of the Convention, the Committee may be assisted by a working group of not more than five of its members, which submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee).

541. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after a decision of the Committee declaring a communication admissible has been communicated to the State party concerned, the State party shall submit to the Committee written explanations or statements clarifying the case under consideration and the remedy, if any, which may have been taken by it (rule 110, para. 2).

542. The Committee concludes its consideration of a communication that has been declared admissible by formulating its views thereon in the light of all information made available to it by the petitioner and the State party. The views of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 111, para. 3).

543. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the States parties concerned and of its own views. The Committee may also decide to include in its annual report the text of its views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible under article 22 of the Convention.

544. The Committee's work under article 22 of the Convention commenced at its second session. At the outset, the Committee agreed that any member who withdraws from the examination of a communication under rule 104 on the grounds set out in rule 103, paragraph 1 (i.e., if he has any personal interest in the case or if he has participated in any capacity in the making of any decision on the case covered by the communication) should not be present during the Committee's consideration of the communication.

545. At its second session, the Committee had before it the first three communications submitted to it under article 22. It took action on those communications in conformity with rule 108, paragraph 3, of its rules of procedure. The Committee also decided to set up a working group of three of its members (rule 106) to meet during its third session to assist the Committee in the handling of the communications under article 22 of the Convention. The Working Group met during the third session and made its recommendations to the Committee.

546. At its third session, the Committee resumed considerations of the three communications that had been placed before it at its second session. After deciding under rule 105, paragraph 3, of its rules of procedure to deal jointly with the communications, the Committee concluded its consideration by declaring them inadmissible ratione temporis. No further communications had been received by the Committee under article 22 by the time of the adoption of the present report at its fourth session.

547. The three communications in question were submitted by Argentinian citizens on behalf of their deceased relatives, also Argentinian citizens, who allegedly had been tortured to death by Argentine military authorities in June, July and November 1976. They claimed that the enactment of Act. No. 23,521 of 8 June 1987 (known as the "Due Obedience Act", or "Ley de Obediencia Debida") and its application to the legal proceedings in the cases of their relatives constituted violations by Argentina of articles 2, 10, 13, 16, 19 and 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This Act presumes, without admitting proof to the contrary, that those persons who held lower military ranks at the time the crimes were committed were acting under superior orders; the Act therefore exempts them from punishment. The immunity also covers superior military officers who did not act as commander-in-chief, chief of zone, or chief of security police or penitentiary forces, provided that they did not themselves decide or that they did not participate in the elaboration of criminal orders. The authors claimed that the enactment of that law conflicts with the obligation of the State party under article 2 of the Convention "to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". Far from enacting such legislation, the authors argued, the State party effectively pardoned those persons guilty of torture and violated the principle set forth in article 2, paragraph 3, of the Convention, which provides that "an order from a superior officer or a public authority may not be invoked as a justification of torture". The authors similarly claimed that the proclamation of Act No. 23,492 on 24 December 1986 (known as the "Finality Act" or "Ley de Punto Final") entailed violations of the Convention.

548. The State party objected to the admissibility of the communications, pointing out that the Convention against Torture entered into force on 26 June 1987, 10 years after the events of detention and torture had occurred and also subsequent to the enactment of the laws in question. It specifically invoked the principle of

non-retroactivity of treaties enunciated in article 28 of the Vienna Convention on the Law of Treaties.

549. In declaring the communications inadmissible ratione temporis, the Committee recalled the principles of the judgment of Nuremberg and referred to article 5 of the Universal Declaration on Human Rights and article 7 of the International Covenant on Civil and Political Rights, which set forth the obligation of States to take effective measures to prevent torture and to punish acts of torture. However, the Committee observed that its competence was defined by article 22 of the Convention as limited to violations of the Convention and not extending to the norms of general international law. The Committee found that the Convention cannot be applied retroactively and that it only has effect as from 26 June 1987. Thus, the communications were found to be inadmissible.

550. Having made that finding, the Committee, however, observed, in an obiter dictum, that the laws in question were "incompatible with the spirit and purpose of the Convention" and urged the State party not to leave the victims of torture and their dependants wholly without a remedy. "If civil action for compensation is no longer possible because the period of limitations for lodging such an action has run, the Committee would welcome, in the spirit of article 14 of the Convention, the adoption of appropriate measures to enable adequate compensation". The Committee indicated that it would welcome receiving from the State party detailed information concerning (a) the number of successful claims for compensation for victims of acts of torture during the "dirty war", or for their dependants, and (b) such pension schemes that may exist, apart from compensation, for the victims of torture or their dependants, including the criteria for eligibility for such pension. A reply from the State party was transmitted to the Committee under cover of a note from the Permanent Mission of Argentina to the United Nations Office at Geneva, dated 12 March 1990.

551. The text of the Committee's decisions is reproduced in annex V to the present report. The text of the State party's reply is reproduced in annex VI.

VII. ADOPTION OF THE REPORT

552. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly.

553. Since the Committee will hold its second regular session of each calendar year in late November, which coincides with the regular session of the General Assembly the Committee decided to adopt its annual report at the end of its spring session for appropriate transmission to the General Assembly during the same calendar year.

554. Accordingly, at its 55th, 56th and 57th meetings, held on 3 and 4 May 1990, the Committee considered the draft report on its activities at the third and fourth session (CAT/C/CRP.1 and Add.1-20, CAT/C/CRP.2 and Add.1 and CAT/C/CRP.3 and Add.1-4). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its fifth session (12 to 23 November 1990) will be included in the annual report of the Committee for 1991.

Notes

1/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 46 (A/44/46).

ANNEX I

List of States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 4 May 1990

State	Date of signature	Date of receipt of the instrument of ratification or accession
Afghanistan	4 February 1985	1 April 1987
Algeria a/	26 November 1985	12 September 1989
Argentina a/	4 February 1985	24 September 1986
Australia	10 December 1985	8 August 1989
Austria a/	14 March 1985	29 July 1987
Belgium	4 February 1985	
Belize		17 March 1986 b/
Bolivia	4 February 1985	
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Byelorussian Soviet Socialist Republic	19 December 1985	13 March 1987
Cameroon		19 December 1986 b/
Canada a/	23 August 1985	24 June 1987
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	
Cuba	27 January 1986	
Cyprus	9 October 1985	
Czechoslovakia	8 September 1986	7 July 1988
Denmark a/	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador a/	4 February 1985	30 March 1988
Egypt		25 June 1986 b/
Finland a/	4 February 1985	30 August 1989
France a/	4 February 1985	18 February 1986

State	Date of signature	Date of receipt of the instrument of ratification or accession
Gabon	21 January 1986	
Gambia	23 October 1985	
German Democratic Republic	7 April 1986	9 September 1987
Germany, Federal Republic of	13 October 1986	
Greece a/	4 February 1985	6 October 1988
Guatemala		5 January 1990 b/
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Hungary a/	28 November 1986	15 April 1987
Iceland	4 February 1985	
Indonesia	23 October 1985	
Israel	22 October 1986	
Italy a/	4 February 1985	12 January 1989
Libyan Arab Jamahiriya		16 May 1989 b/
Liechtenstein	27 June 1985	
Luxembourg a/	22 February 1985	29 September 1987
Mexico	18 March 1985	23 January 1986
Morocco	8 January 1986	
Netherlands a/	4 February 1985	21 December 1988
New Zealand a/	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Nigeria	28 July 1988	
Norway a/	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 b/
Poland	13 January 1986	26 July 1989
Portugal a/	4 February 1985	9 February 1989
Senegal	4 February 1985	21 August 1986
Sierra Leone	18 March 1985	

State	Date of signature	Date of receipt of the instrument of ratification or accession
Somalia		24 January 1990 b/
Spain a/	4 February 1985	21 October 1987
Sudan	4 June 1986	
Sweden a/	4 February 1985	8 January 1986
Switzerland a/	4 February 1985	2 December 1986
Togo a/	25 March 1987	18 November 1987
Tunisia a/	26 August 1987	23 September 1988
Turkey a/	25 January 1988	2 August 1988
Uganda		3 November 1986 b/
Ukrainian Soviet Socialist Republic	27 February 1986	24 February 1987
Union of Soviet Socialist Republics	10 December 1985	3 March 1987
United Kingdom of Great Britain and Northern Ireland c/	15 March 1985	8 December 1988
United States of America	18 April 1988	
Uruguay a/	4 February 1985	24 October 1986
Venezuela	15 February 1985	
Yugoslavia	18 April 1989	

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a/ Made the declaration under articles 21 and 22 of the Convention.

b/ Accession.

c/ Made the declaration under article 21 of the Convention.

ANNEX II

Membership of the Committee against Torture

(1990-1991)

Name of member	Country of nationality	Term expires on 31 December
Mr. Alfredo R. A. BENGZON	Philippines	1991
Mr. Peter Thomas BURNS	Canada	1991
Ms. Christine CHANET	France	1991
Ms. Socorro DIAZ PALACIOS	Mexico	1991
Mr. Alexis DIPANDA MOUELLE	Cameroon	1993
Mr. Ricardo GIL LAVEDRA	Argentina	1991
Mr. Yuri A. KHITRIN	Union of Soviet Socialist Republics	1993
Mr. Dimitar N. MIKHAILOV	Bulgaria	1993
Mr. Bent SØRENSEN	Denmark	1993
Mr. Joseph VOYAME	Switzerland	1993

ANNEX III

Status of submission of reports by States parties under article 19 of the Convention as at 4 May 1990

Initial reports due in 1988

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Afghanistan	26 June 1987	25 June 1988		
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belize	26 June 1987	25 June 1988		
Bulgaria	26 June 1987	25 June 1988		
Byelorussian Soviet Socialist Republic	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Cameroon	26 June 1987	25 June 1988	15 February 1989	CAT/C/5/Add.16
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.5
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988		
Mexico	26 June 1987	25 June 1988	10 August 1988	CAT/C/5/Add.7
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988		
Philippines	26 June 1987	25 June 1988	26 July 1988 28 April 1989	CAT/C/Add.6 CAT/C/Add.18
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (Replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.17
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukrainian Soviet Socialist Republic	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Union of Soviet Socialist Republics	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Uruguay	26 June 1987	25 June 1988		

Initial reports due in 1989

Chile	30 October 1988	29 October 1989	21 September 1989	CAT/C/7/Add.2
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5
Colombia	7 January 1988	6 January 1989	24 April 1989	CAT/C/7/Add.1
Czechoslovakia	6 August 1988	5 August 1989	21 November 1989	CAT/C/7/Add.4
Ecuador	29 April 1988	28 April 1989		

Initial reports due in 1989

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Greece	5 November 1988	4 November 1989		
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989		
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6

Initial reports due in 1990

Algeria	12 October 1989	11 October 1990		
Australia	7 September 1989	6 September 1990		
Brazil	28 October 1989	27 October 1990		
Finland	29 September 1989	28 September 1990		
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990		
Libyan Arab Jamahiriya	15 June 1989	14 June 1990		
Netherlands	20 January 1989	19 January 1990	14 March 1990	CAT/C/9/Add.1
Poland	25 August 1989	24 August 1990		
Portugal	11 March 1989	10 March 1990		
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990		

ANNEX IV

Draft consolidated guidelines for the initial part of the reports of States parties as approved by the Committee against Torture at its 49th meeting, on 26 April 1990

Land and people

1. This section should contain information about the main ethnic and demographic characteristics of the country and its population, as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on population by mother tongue, life expectancy and infant mortality.

General political structure

2. This section should describe briefly the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.

General legal framework within which human rights are protected

3. This section should contain information on:

(a) Which judicial, administrative or other competent authorities have jurisdiction affecting human rights;

(b) What remedies are available to an individual who claims that any of his rights have been violated; and what systems of compensation and rehabilitation exist for victims;

(c) Whether any of the rights referred to in the various human rights instruments are protected either in the Constitution or by a separate bill of rights and, if so, what provisions are made in the Constitution or bill of rights for derogations and in what circumstances;

(d) Whether the provisions of the various human rights instruments can be invoked before, or directly enforced by, the courts, other tribunals or administrative authorities or whether they must be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned.

Information and publicity

4. This section should indicate whether any special efforts have been made to promote awareness among the public and the relevant authorities of the rights contained in the various human rights instruments. The topics to be addressed should include the manner and extent to which the texts of the various human rights instruments have been disseminated; whether such texts have been translated into the local language or languages; what government agencies have responsibility for preparing reports and whether they normally receive information or other inputs from external sources; and whether the contents of the reports are the subject of public debate.

ANNEX V

Decisions of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

concerning

Communications Nos. 1/1988, 2/1988 and 3/1988*

Submitted by: O. R., M. M. and M. S. [names deleted]

Alleged victims: Authors' deceased relatives

State party concerned: Argentina

Date of communications: 22 November 1988

The Committee against Torture established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 1989

Adopts the following:

A. Decision to deal jointly with three communications**

The Committee against Torture,

Considering that communications Nos. 1/1988, 2/1988 and 3/1988 refer to closely related events said to have taken place in Argentina in 1976, and to the enactment of certain legislation in December 1986 and June 1987,

Considering further that the three communications can appropriately be dealt with together,

1. Decides, pursuant to rule 105, paragraph 3, of its rules of procedure, to deal jointly with these communications;

2. Further decides that this decision shall be communicated to the State party and the authors of the communications.

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* Pursuant to rule 104 of the Committee's rules of procedure, Mr. Gil Lavedra did not take part in the consideration of the communications or in the decisions adopted by the Committee, at any stage. He was not present during the Committee's deliberations or decision-making.

** Made public by decision of the Committee.

B. Decision on admissibility**

1. The authors of the communications are O. R., M. M. and M. S., Argentinian citizens residing in Argentina, writing on behalf of their deceased relatives M. R., J. M. and C. S., who were Argentinian citizens and were allegedly tortured to death by Argentine military authorities in June, July and November 1976, respectively. The authors are represented by counsel.

2.1 The authors claim that the enactment of Act No. 23,521 of 8 June 1987 (known as the "Due Obedience Act" or "Ley de Obediencia Debida") and its application to the legal proceedings in the cases of their relatives constitute violations by Argentina of articles 2, 10, 13, 16, 19 and 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Similarly, it is also claimed that the proclamation of Act No. 23,492 of 24 December 1986 (known as the "Finality Act" or "Ley de Punto Final") entails violations of the Convention.

2.2 The Convention against Torture was signed by the Government of Argentina on 4 February 1985, ratified on 24 September 1986 and entered into force on 26 June 1987. Article 2 of the Convention provides in part:

> "1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
>
> (...)
>
> 3. An order from a superior officer or a public authority may not be invoked as a justification of torture."

2.3 It is claimed that Act No. 23,521 is incompatible with Argentina's obligations under the Convention. The Act presumes, without admitting proof to the contrary, that those persons who held lower military ranks at the time the crimes were committed were acting under superior orders; the Act therefore exempts them from punishment. The immunity also covers superior military officers who did not act as commander-in-chief, chief of zone, or chief of security police or penitentiary forces, provided that they did not themselves decide or that they did not participate in the elaboration of criminal orders.

2.4 With regard to the time frame of application of the Convention, the authors acknowledge that their relatives were tortured to death during the prior Argentine Government, before the entry into force of the Convention. They challenge, however, the compatibility of the Due Obedience Act with the Convention. Although Act. No. 23,521 was enacted before the entry into force of the Convention against Torture, the authors refer to article 18 of the Vienna Convention on the Law of Treaties (in force 27 January 1980), which provides that:

> "A State is obliged to refrain from acts which would defeat the object or purpose of a treaty when (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification ..."

Both signature and ratification of the Convention against Torture by Argentina took place prior to the enactment of Act No. 23,521.

2.5 At issue is also the compatibility with the Convention against Torture of Act No. 23,492, of 24 December 1986, known as Law of "Punto Final", which established a deadline of 60 days for commencing new criminal investigations with regard to the events of the so-called "dirty war" (guerra sucia). This deadline expired on 22 February 1987.

3. By decisions under rule 106 of its rule of procedure, the Committee against Torture transmitted the three communications to the State party requesting information concerning the question of the admissibility of the communications.

4.1 On 14 July 1989, the State party objected to the admissibility of the communications on the grounds that all the events in question, including the enactment of the laws challenged by the authors took place prior to the entry into force of the Convention against Torture.

4.2 In particular, the State party refers to article 28 of the Vienna Convention on the Law of Treaties which stipulates:

> "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

4.3 In this connection, the State party observes that this provision merely codifies the existing customary law with regard to the non-retroactivity of treaties. It refers to decisions of the Permanent Court of International Justice (series A/B, No. 4, 24) and of the International Court of Justice (reports, 1952, 40) holding that a treaty only applies retroactively if such an intention is expressed in the treaty or may be clearly inferred from its provisions.

4.4 In respect of this provision, the International Law Commission has observed:

> "... in numerous cases under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Commission of Human Rights has held that it is incompetent to entertain complaints regarding alleged violations of human rights said to have occurred prior to the entry into force of the Convention with respect to the State in question." a/

4.5 The State party places Acts Nos. 23,492 and 23,521 in this context, since their scope of application extends from 24 March 1976 to 26 September 1983 and the Convention against Torture came into force on 26 June 1987.

5.1 The State party further contends that the authors have failed to exhaust domestic remedies, and indicates that all victims of crimes have a right to compensation for the physical and moral injury suffered and that Act No. 23,492 recognizes this right in article 6, which specifically provides that "the extinction of penal action pursuant to article 1 does not affect civil proceedings".

5.2 Moreover, article 30 of the Criminal Code stipulates that the obligation to indemnify takes precedence over all other obligations incurred by the person responsible subsequent to the crime, including payment of the fine, while article 31 stipulates that the obligation to pay compensation is jointly shared by all those responsible for the crime. Thus, both the victims and their relatives as well as any third parties who might have suffered injury, even indirectly, are entitled to full compensation. Article 1112 of the Argentine Civil Code stipulates that public officials guilty of culpable omission in the course of their duties are liable to pay compensation. As far as the liability of the State is concerned, articles 43 and 1113 clearly stipulate that the State is responsible for its agents.

6.1 Counsel for the authors, in an undated submission received on 12 September 1989, contests the State party's observations and reiterates that "what is being challenged is the application of the Due Obedience Act to the accused, as well as the very existence of that law, which breaches the Convention against Torture".

6.2 With regard to the requirement of exhaustion of domestic remedies, counsel contends that there are no effective remedies, in particular with regard to compensation. Although the government in principle accepts its liability to pay compensation, in practice it allegedly prevents injured parties from obtaining compensation from the military courts, thus requiring them to pursue other channels, through the civil courts. Counsel further explains that "the distinction between civil and criminal action has not been accepted in our codes of procedure, which for the purposes of compensation for the consequences of a crime provide that proceedings must be continued in the same kind of court. Failure to do so has been regarded by our foremost procedural experts as a violation of the right to a defence. When the return to democracy began, the direct victims and/or their representatives plunged into criminal proceedings in order to ensure the investigation of the facts, the punishment of those responsible, the search for missing persons (which is still continuing) and the discovery of the truth about what actually happened. In addition there was a need for a statement by the criminal courts confirming the existence of the reported events and the form they took. Those who began proceedings to seek compensation came up against the requirement that the civil courts should be used, and the rejection of all the civil cases".

7.1 Before considering any claims contained in a communication, the Committee against Torture shall, in accordance with rule 107 of its rules of procedure, decide whether or not it is admissible under article 22 of the Convention.

7.2 With regard to the prohibition of torture, the Committee recalls the principles of the judgment of Nuremberg, and refers to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, all of which constitute norms of international law recognized by most States Members of the United Nations, including Argentina. Thus, even before the entry into force of the Convention against Torture, there existed a general rule of international law which should oblige all States to take effective measures to prevent torture and to punish acts of torture. In this context, it would seem that Argentine Act No. 23,521 on "due obedience" pardons the acts of torture that occurred during the "dirty war". Nevertheless, the Committee is bound to observe that its competence with respect to communications is defined by article 22 of the Convention against Torture, whereby that competence is limited to violations of this Convention and does not extend to the norms of general international law.

7.3 With regard to the temporal application of the Convention, the Committee recalls that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force on 26 June 1987. In this connection, the Committee observes that the Convention only has effect from that date and cannot be applied retroactively. Therefore, the promulgation of the "Punto Final"

Act on 24 December 1986 and the enactment, on 8 June 1987, of the "Due Obedience" Act could not, ratione temporis, have violated a Convention that had not yet entered into force.

7.4 The only issue remaining before the Committee is whether there have been any violations of the Convention subsequent to its entry into force. A question arises concerning the immediate application of the provisions of the Convention, for example, with regard to the right of victims of torture to a remedy. Article 13 provides in part: "Each State party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities". Although the authors have not invoked article 14 of the Convention, the Committee ex officio shall examine whether issues arise under this article, which stipulates in part: "Each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of death of the victim as a result of an act of torture, his dependants shall be entitled to compensation".

7.5 The Committee observes that "torture" for purposes of the Convention can only mean torture that occurs subsequent to the entry into force of the Convention. Thus, the scope of articles 13 and 14 of the Convention does not cover torture that took place in 1976, 10 years before the entry into force of the Convention, and the right to redress provided for in the Convention necessarily arises only with respect to events subsequent to 26 June 1987.

8. The Committee therefore decides:

(a) That the communications are inadmissible ratione temporis;

(b) That this decision shall be communicated to the State party and to the authors through their counsel.

9. The Committee observes, however, that even if the Convention against Torture does not apply to the facts of these communications, the State of Argentina is morally bound to provide a remedy to victims of torture and to their dependants, notwithstanding the fact that the acts of torture occurred before the entry into force of the Convention, under the responsibility of a de facto government, which is not the present Government of Argentina. The Committee notes with concern that it was the democratically elected post-military authority that enacted the Punto Final and the Due Obedience Acts, the latter after the State had ratified the Convention against Torture and only 18 days before the Convention entered into force. The Committee deems this to be incompatible with the spirit and purpose of the Convention. The Committee notes that, as a result, many persons who committed acts of torture remain unpunished, including the 39 senior officers pardoned by decree of the President of Argentina on 6 October 1989, who were to have been tried by the civil courts. This policy is in stark contrast to the attitude of the State towards the victims of the "dirty war" of 1976-1983. The Committee urges the State party not to leave the victims of torture and their dependants wholly without a remedy. If civil action for compensation is no longer possible because the period of limitations for lodging such an action has run out, the Committee would welcome, in the spirit of article 14 of the Convention, the adoption of appropriate measures to enable adequate compensation.

10. The Committee would also welcome receiving from the State party detailed information concerning (a) the number of successful claims for compensation for victims of acts of torture during the "dirty war", or for their dependants, and (b) such pension schemes that may exist, apart from compensation, for the victims of torture or their dependants, including the criteria for eligibility for such pension.

Notes

a/ *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev.1), p. 44.

ANNEX VI

Reply from the Government of Argentina

In respect of the request of the Committee against Torture for information contained in paragraph 10 of the Committee's decision on admissibility in communications Nos. 1/1988, 2/1988 and 3/1988 (see annex V above), the following reply from the State party was transmitted to the Committee under cover of a note from the Permanent Mission of Argentina to the United Nations Office at Geneva, dated 12 March 1990:

> The claims for damages lodged by victims of events that occurred while the last *de facto* government was in power are of a comprehensive nature as regards the subjects covered. In other words, no records are kept from which to determine how many claims were based on acts of torture, although most of them were.
>
> Such claims are heard in the federal courts throughout the country.
>
> Information on cases within the jurisdiction of the federal capital is centralized and readily accessible, since in all cases the National Treasury Attorney's Office has taken responsibility for representing the State, in accordance with the provisions of Decree No. 1895/84.
>
> In 229 cases in which the National Treasury Attorney's Office represented the State pursuant to the above-mentioned Decree, actions were brought for damages or compensation for moral injury as a result of detention in the following circumstances: deprivation of liberty in the custody of the National Executive Power, deprivation of liberty without action by the National Executive Power, disappearance of persons and inclusion in the institutional acts of 1976.
>
> In 92 cases, the action was declared to have lapsed on the grounds that the claimants had not prosecuted it. Thus, out of an effective total of 137 cases, in 30 the application of the statute of limitations claimed by the State was rejected; some of the cases have already ended with a ruling in favour of the claimants and in others substantive proceedings are continuing, with the strong likelihood of a decision favourable to the claimants. Sixty-one claims fell under the statute of limitations and in one other a plea of *res judicata* was accepted. A further 45 cases are *sub judice*.
>
> In the cases brought before other courts, representation of the State was not centralized but entrusted to members of the Public Prosecutor's Department in the various courts. Consequently information on these cases is not at present available. The Argentine Government would be grateful if the Committee would inform it of its interest in this respect in order that it may make appropriate arrangements for this purpose.
>
> In any event, and without prejudice to what was stated in the previous paragraph, the claims in question have the same characteristics as those heard in the course of the federal capital.

On 30 October 1986, the National Congress adopted Act No. 23,466, which was actually promulgated on 10 December 1986. Under this Act a non-contributory pension is awarded to relatives of missing persons. The beneficiaries of this pension are children under 21 years of age who produce evidence of the enforced disappearance of one or both parents (which occurred before 10 December 1983) in a complaint filed with a competent judicial authority, CONADEP, or the Under-Secretariat for Human Rights of the Ministry of the Interior. The benefit also extends to the spouse, or a person cohabiting in apparent matrimony for at least five years immediately prior to the disappearance, together with minor children if any; parents and/or siblings who are unfit for work and are not engaged in any gainful activity or in receipt of any retirement pay, pension or non-contributory benefits; and minor siblings who have lost both parents and who habitually lived with the missing person before his disappearance.

To date 4,856 pension applications have been made under Act No. 23,466. Of these, 3,558 have been granted, 160 have been rejected on the grounds that they did not fall within the provisions of the Act, and 1,138 are being processed.

ANNEX VII

List of documents issued for the Committee during the reporting period

A. Third session

Symbol	Title
CAT/C/2/Add.1	Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and reservations, declarations and objections under the Convention
CAT/C/3/Rev.1	Rules of procedure of the Committee
CAT/C/5/Add.11	Initial report of the Union of Soviet Socialist Republics
CAT/C/5/Add.12/Rev.1	Initial report of Argentina
CAT/C/5/Add.13	Initial report of the German Democratic Republic
CAT/C/5/Add.14	Initial report of the Byelorussian Soviet Socialist Republic
CAT/C/5/Add.15	Initial report of Canada
CAT/C/5/Add.16	Initial report of Cameroon
CAT/C/5/Add.17	Initial report of Switzerland
CAT/C/5/Add.18	Additional information updating the initial report of the Philippines
CAT/C/7/Add.1	Initial report of Colombia
CAT/C/7/Add.2	Initial report of Chile
CAT/C/8	Provisional agenda and annotations for the third session: note by the Secretary-General
CAT/C/L.4	Draft revision of the general guidelines for initial reports to be submitted by States parties: note by the Secretary-General
CAT/C/SR.25-42	Summary records of the third session of the Committee

B. Fourth session

CAT/C/2/Add.2	Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and reservations, declarations and objections under the Convention

Symbol	Title
CAT/C/4/Rev.1	General guidelines regarding the form and contents and initial reports to be submitted by States parties under article 19 of the Convention
CAT/C/5/Add.19	Initial report of Senegal
CAT/C/5/Add.20	Initial report of the Ukrainian Soviet Socialist Republic
CAT/C/5/Add.21	Initial report of Spain
CAT/C/7/Add.3	Initial report of Tunisia
CAT/C/7/Add.4	Initial report of Czechoslovakia
CAT/C/7/Add.5	Initial report of China
CAT/C/9	Note by the Secretary-General listing initial reports that are due in 1990
CAT/C/9/Add.1	Initial report of the Netherlands
CAT/C/10	Provisional agenda and annotations: fourth session
CAT/C/L.5	Action by the General Assembly at its forty-fourth session. Draft consolidated guidelines for the initial part of the reports of States parties under international human rights instruments: note by the Secretary-General
CAT/C/SR.43-57	Summary records of the fourth session of the Committee

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